Northeastern University, Office of the Registrar
271 Huntington Ave.
Boston, MA 02115
SCALE OF GRADES AND COMMENTS TO ACCOMPANY TRANSCRIPTS

Effective Fall 2016: College of Professional Studies undergraduate programs converted from a quarter system to a semester system. For student records including hours earned prior to fall 2016, the credit hour conversion rate is as follows: QH x .75. For example a 4-credit quarter course is now equivalent to a 3-credit semester course.

Effective Fall 2009: Northeastern University converted its Student Information System. All courses and Programs were converted.

Northeastern University Course Numbering

UNDERGRADUATE

Orientation and Basic No degree credit	**0001-0999**
Introductory Level (First year) Survey, Foundation and Introductory courses normally with no prerequisites and designed primarily for students with no prior background	**1000-1999**
Intermediate Level (Sophomore/Junior year) Normally designed for sophomores and above, but in some cases open to freshman majors in thedepartment.	**2000-2999**
Upper Intermediate Level (Junior year) Designed primarily as courses for juniors. Pre-requisites are normally required and these courses are pre-requisites for advanced courses.	**3000-3999**
Advanced Level (Senior year) Designed primarily for juniors and seniors, or specialized courses. Includes research, capstone and thesis.	**4000-4999**

GRADUATE

Orientation and Basic No degree credit	**0001-0999**
1st level graduate Courses primarily for graduate students and qualified undergraduate students with permission	**5000-5999**
2nd level graduate Generally for Master's only and Clinical Doctorate	**6000-6999**
3rd level graduate Master's and Doctoral level classes. Includes Master's Thesis	**7000-7999**
Clinical/Research/Readings Includes Comprehensive Exam Preparation	**8000-8999**
Doctoral Research and Dissertation	**9000-9999**

Northeastern University Grade Scale

Letter Grade	Numerical Equivalent	Explanation
A	4.0	Outstanding Achievement
A-	3.667	
B+	3.333	
B	3.0	Good Achievement
B-	2.667	
C+	2.333	
C	2.0	Satisfactory Achievement
C-	1.667	
D+	1.333	
D	1.0	Poor Achievement
D-	0.667	
F	0.0	Failure
I		Incomplete
IP		In Progress
NE		Not Enrolled
NG		Grade not reported by Faculty
S		Satisfactory (Pass/Fail basis; counts towardtotal degree requirements)
U		Unsatisfactory (Pass/Fail basis)
X		Incomplete (Pass/Fail basis)
L		Audit (no credit given)
T		Transfer
W		Course Withdrawal

Course Comments

E	Course excluded from GPA
HON	Honors level course
I	Course included in GPA

LAW SCHOOL

CR	Credit
F	Fail
H	Honors
HH	High Honors
I	Incomplete
MP	Marginal Pass
P	Pass

Earned Hours

Northeastern University offers both quarter hour and semester hour programs.

Quarter Hours to Semester Hours Conversion Rate: For student records including quarter hours, the approved semester hour conversion rate is as follows: QH x .75. For example a 4-credit quarter course is equivalent to 3 creditsemester courses.

UNITED STATES COURT OF APPEALS
FOR THE FIRST CIRCUIT

JONATHAN COHEN
LAW CLERK TO THE
HONORABLE O. ROGERIEE
THOMPSON,
U.S. CIRCUIT JUDGE
jonathan_cohen@ca1.uscourts.gov
(401) 272-2960

FEDERAL BUILDING AND
U.S. COURTHOUSE
ONE EXCHANGE TERRACE
PROVIDENCE, RI 02903

1 COURTHOUSE WAY, SUITE 8370
BOSTON, MASSACHUSETTS 02210

The Honorable Juan R. Sánchez
United States District Court
Eastern District of Pennsylvania
601 Market Street
Philadelphia, PA 19106

June 11, 2023

RE: Recommendation for Max Bloodgood:

Dear Judge Sánchez:

My name is Jonathan Cohen, and I currently serve as a law clerk to United States Circuit Judge O. Rogeriee Thompson. After having the pleasure of supervising Max for their co-op with Judge Thompson last semester, I'm thrilled to offer my support for their application to serve as a law clerk within your chambers. Max is the most impressive law student I've worked with in my admittedly short legal career, and I have no doubt they would be an asset to any member of our federal bench.

As a law clerk for Judge Thompson, I've had the privilege of supervising multiple interns directly and indirectly -- working with judicial interns with a range of backgrounds and attending schools throughout and beyond New England. I've gotten to do the same while serving as a law clerk at the District of Rhode Island, and then as a legal fellow at a nonprofit organization in Providence, RI. In Judge Thompson's chambers, interns like Max are primarily tasked with completing bench memoranda on the variety of cases that come before our court. As you no doubt know, these assignments can often be intense -- requiring our law student interns, under tight deadlines, to research and communicate proficiently on complex areas of federal and state law.

In these assignments, Max shined. Supervising their memos was always a delight -- their first drafts were consistently high quality, allowing us to go through a thoughtful and intentional editing process above and beyond getting the record and law straight for Judge. Max's competence meant that, by the time they were submitting their final memos ahead of sitting weeks, Max and I had the time to consider some of the finer aspects of the appeal, and its implications for the law and society more broadly. During these discussions, Max never failed to impress me. They consistently

demonstrated a keen passion for justice, and empathy for the very real parties within each case. And in their memos and within our discussions, Max confronted these considerations while applying the law to its letter; navigating this sometimes unavoidable tension with the wisdom and maturity one would want of any law clerk.

Max's impressive work products didn't stop there. They actively took on additional work and did a phenomenal job each time. Notably, Max willingly prepared a memo for one of the most complex appeals before Judge Thompson during their semester with us, and -- on top of their standard internship workload -- regularly volunteered to help clerks on unrelated projects for chambers. During Max's internship, they helped each of Judge's clerks at some point (far from the norm, where interns mostly stick to assignments by their direct supervisors), and I can honestly say that, by the end of the semester, every clerk had reached out to me separately to praise Max's work at least once. As Max's supervisor, I had the privilege of having what felt like another clerk at my disposal. Indeed, Max is the only intern I've worked with who I have trusted, and has demonstrated the skills necessary, to help draft full analyses for ultimate inclusion in draft opinions for Judge.

Max's contributions to Judge Thompson's chambers went far beyond their aptitude for legal research and writing. Although our chambers maintained a hybrid schedule, Max regularly worked from the courthouse and attended oral arguments in-person, while contributing weekly to virtual chambers-wide meetings. In these in-person and online interactions, Max brought a great level of depth and humility to our group conversations, as well as a healthy dose of wit and humor. That's all to say, on top of their legal skills, they're a delight to work with.

I strongly recommend you consider Max for a clerkship with your chambers, and would love to support their application however I can. If you have any questions or would like to discuss Max further, please don't hesitate to contact me by cell at (646) 462-9005 or by email at jbcohen93@gmail.com.

Sincerely,

Jonathan Cohen

Northeastern University
School *of* Law

400 Huntington Ave.
Boston, MA 02115

June 1, 2023

Recommendation on Behalf of Max Bloodgood

Your Honor:

I recommend Max Bloodgood, a student in the Class of 2024 at Northeastern University School of Law, for a judicial clerkship. I have taught Max in two classes, and based on my interactions both inside and outside the classroom, I believe Max has the ability and the temperament to thrive in a judicial chambers.

First and foremost, Max has top-notch academic skills. They earned a "High Honors" in my 1L Criminal Justice course, and wrote a terrific final examination that revealed a laudable capacity for legal analysis, most notably, the ability to apply law to fact in a compelling fashion. In my experience, that trait is arguably the most important in the practice of law—and the one most often lacking in law students. The fact that Max already possesses a knack for sophisticated analysis bodes very well for the future. Max also did outstanding work in my Wrongful Convictions and Post-Conviction Remedies course as a 2L, producing an excellent research paper about the "progressive prosecutor" movement.

I am not alone in the Bloodgood fan club. Their Civil Procedure professor awarded them a "High Honors," and applauded their "extraordinary performance!" and "encyclopedic knowledge." They also earned a "High Honors" in Torts, along with praise for their "outstanding ability to use analogical reasoning, drawing on case law and legal rules; and to make arguments, justify them, and draw conclusions."

Second, in addition to possessing the academic chops to succeed as a clerk, Max also has the disposition to navigate the twists and turns of a high-volume work setting and collaborate with disparate personalities. Max strikes me as a remarkably diligent and poised person who does not get rattled easily. In sum, I think Max would be a fantastic addition to your team. Please feel free to contact me if you have any questions.

Sincerely,

Daniel S. Medwed
University Distinguished Professor
Northeastern University
d.medwed@northeastern.edu
617 373-6590

Northeastern University
School of Law
Faculty

June 9, 2023

Re: Max Bloodgood Recommendation

It is my great pleasure to recommend Max Bloodgood for a judicial clerkship position in your chambers. I was lucky enough to rely on Mx. Bloodgood's support as a Teaching Assistant (TA) in my course, Legal Skills in Social Context (LSSC); they are exceedingly competent, reliable, intellectually curious, and possess a keen ability to express complex legal arguments in writing. In short, they would make an excellent addition to your chambers and I highly recommend them to you.

LSSC is an innovative, signature program at Northeastern that provides first-year students with the opportunity to develop their lawyering skills while working with community organizations on large-scale social justice research projects. Max's intelligence, calm competence, humility, and friendly demeanor made them an ideal role model for the 26 1Ls they supervised in their role as TA. As a TA, Mx. Bloodgood acted as a mentor to 1Ls and provided written feedback on their writing over the course of the semester. They also regularly met with students outside of class to assist with legal research, citation format, and memo structure. In addition to providing traditional legal writing support (for example Bluebook assistance) Max also supported the students as they began to engage in difficult and complex legal research related to their social justice projects. Max regularly met with students one-on-one to provide in-depth legal writing help. I know that the students found their instruction and assistance invaluable. Max not only possesses highly advanced legal writing and critical legal thinking skills, but is the rare student who is also incredibly skilled at teaching and explaining those skills to others.

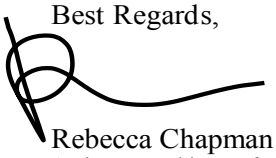
In addition to their mentorship of 1Ls, Mx. Bloodgood also completed several legal research and writing tasks for me in their role as TA. Their research was always immaculate and clearly and succinctly presented, and their writing is as strong as I have yet seen in a student. They are skilled at both persuasive and objective legal writing, and able to write and argue from any perspective. They are responsive, responsible, and a pleasure to work with. I wished that I could have worked with Max for two semesters – indeed I asked them to continue working with me, but sadly for me their schedule did not permit it.

Mx. Bloodgood is not only an exceptionally strong writer, but is also uncommonly skilled at working collaboratively. During their 2L year, while serving as Executive Articles Editor of Northeastern University Law Review, Max supervised the entire submissions process, as well as the editing process for accepted articles. They engaged in complex and interesting scholarship at the forefront of civil rights issues, and led and managed several teams of students.

Finally, on a personal level, Mx. Bloodgood is a truly lovely person and it was a pleasure to work closely with them for a semester. Max is both a talented and engaged law student, and a kind and generous person. I have learned a great deal from them. I have no doubt that they will be an invaluable addition to your chambers and I recommend them to you in the highest possible terms.

Please feel free to contact me at (617) 373-5167 or via email at r.chapman@northeastern.edu should you need additional information.

Best Regards,



Rebecca Chapman
Assistant Teaching Professor
Northeastern University School of Law
Cargill 66
416 Huntington Ave
Boston, MA 02115

MAX BLOODGOOD
198 Hillside St. Apt. 11, Boston, MA 02120 • (484)-947-1970 • bloodgood.k@northeastern.edu

WRITING SAMPLE

As an intern at the First Circuit Court of Appeals, I composed several bench memos to provide Judge Thompson with a full understanding of the facts and legal issues of the case in advance of oral argument. Because the cases on which I worked are still pending before the court, this writing sample uses a fact pattern from a legal research and writing course assignment and places it in the context of a bench memo. This sample has not been substantially edited by any third parties.

BENCH MEMORANDUM

TO: Judge Doe
FROM: Max Bloodgood
DATE: June 9, 2023

Case # 1
Appellant: 10 min.
Appellee: 10 min.

Case: **Matthews v. Smith, 22-1297**

Hearing Date: June 13, 2023

Hearing Panel: Roe, Doe, and Poe

Parties: Plaintiff/Appellant: Lincoln Matthews Jr.

Defendant/Appellee: Peter Smith

Appeal From: U.S. District Court for the District of Massachusetts

Recommendation: Reverse

I. ISSUES

A. Did the district court err in finding that Smith was entitled to the protections of qualified immunity?

Yes. Because no reasonable officer in Smith's shoes would believe they had probable cause to arrest Matthews, Smith is not entitled to qualified immunity.

B. Did the district court err in granting summary judgment for Smith and denying Matthews' motion for summary judgment?

Yes. Since no reasonable jury could find Smith had probable cause to effectuate the arrest, Matthews—rather than Smith—is entitled to summary judgment.

II. BACKGROUND

Appellant Lincoln Matthews Jr. ("Matthews") appeals the district court's grant of summary judgment in favor of Appellee Peter Smith ("Smith") on his deprivation of civil rights claim under 42 U.S.C. § 1983.

Judge Doe's Comments

Around noon on July 15, 2020, a Cambridge resident called 911 after she observed two Black men on the porch across the street from her home, one of whom appeared to be wedging his shoulder against the front door. Suspecting they were attempting a break-in, the resident requested police come to the home. When Smith, a Cambridge Police sergeant, arrived at the house, he found Matthews, a Harvard University professor, standing in the threshold of the home with the door still open.

Smith informed Matthews that he was investigating a possible break-in and requested he step outside to speak with him. Matthews refused, instead making a phone call in which he asked for "the Chief's name" and said he was "dealing with a racist police officer in his home." After some back and forth—in which Smith claims Matthews yelled and spoke over him—Matthews provided Smith with his Harvard identification card, prompting Smith to request the presence of the Harvard University Police.

According to Smith's police report, Matthews continued to yell about Smith being a racist police officer, shouting that he was "not someone to mess with." Concluding that Matthews was likely the lawful resident of the home, Smith told Matthews he was going to leave. By that time, several Cambridge and Harvard police officers, in addition to several neighbors, had gathered outside the home. Matthews followed Smith out onto the sidewalk, where he continued to yell at Smith while flailing his arms. After warning Matthews he would place him under arrest if he did not calm down, Smith arrested Matthews for disorderly conduct. A few days later, the city dropped the charge.

In January of 2021, Matthews initiated this action in district court, bringing a claim under 42 U.S.C. § 1983 against Smith.[1] He alleged that his arrest was effected without probable cause in violation of his constitutional rights. Both parties moved for summary judgment, and the district court granted Smith's motion, finding he was entitled to qualified immunity and thus protected from liability under § 1983.

III. STANDARD OF REVIEW

We review a district court's decision on cross-motions for summary judgment de novo, affirming a grant of summary judgment if we find no genuine dispute of material fact. See Blackie v. State of Maine, 75 F.3d 716, 721 (1st Cir. 1996).

IV. ANALYSIS

[1] The district court dismissed Matthews' claims under the Massachusetts Civil Rights Act (MCRA)—the state analogue of § 1983—because Matthews did not allege the existence threats, intimidation or coercion, which are required to enable a private cause of action. Matthews also brought claims against the City of Cambridge, but the district court granted the city's motion to dismiss on the ground that Matthews failed to allege that his injuries were a result of an official policy or custom by the city. Matthews does not challenge these decisions on appeal.

Judge Doe's Comments

A. Qualified Immunity

Matthews argues that the district court erred in finding qualified immunity barred his claim against Smith because the circumstances of his arrest so clearly lacked evidence of probable cause. Smith asks us to adopt the position of the district court, who concluded that there was at least enough of a question of probable cause to trigger qualified immunity.

The doctrine of qualified immunity provides protection from liability under 42 U.S.C. § 1983 to public officials "insofar as their conduct does not violate clearly established statutory or constitutional rights of which a reasonable person would have known." Raiche v. Pietroski, 623 F.3d 30, 35 (1st Cir. 2010) (quoting Pearson v. Callahan, 555 U.S. 223, 230 (2009)).

An official is not entitled to a qualified immunity defense if: (1) they violated the plaintiff's constitutionally protected right, and (2) the violated right was "clearly established at the time of the violation."[2] Id.; see Irish v. Fowler, 979 F.3d 65, 76 (1st Cir. 2020). I will address each of these prongs in turn.

i. Qualified Immunity Prong 1: Smith violated Matthews' established constitutional right.

Smith violated Matthews' constitutionally established right to be free from unlawful arrest. It is well-established that the Fourth Amendment recognizes the right to "be free from unreasonable seizures of the person" and thus the right to be free from arrest without constitutionally adequate probable cause. See, e.g., Cox v. Hainey, 391 F.3d 25, 30 (1st Cir. 2004); Karamanoglu v. Town of Yarmouth, 15 F.4th 82, 87 (1st Cir. 2021); Charron v. County of York, 49 F.4th 608, 615 (1st Cir. 2022). Probable cause is a "fluid concept" assessed on the basis of the totality of the circumstances, District of Columbia v. Wesby, 138 S. Ct. 577, 586 (2018), but generally requires a showing that an objectively reasonable officer be able to conclude that a crime has been committed in which the individual was involved, id.; Karamanoglu, 15 F.4th at 87. In the context of qualified immunity, we require a "somewhat lesser" showing than probable cause, requiring the plaintiff show that the presence of probable cause was not even "arguable or subject to debate." Cox, 391 F.3d at 31.

Here, whether an objectively reasonable officer would have had probable cause to arrest Matthews depends on the elements of disorderly conduct under Massachusetts law. See Charron, 49 F.4th at 616 (examining elements of offense under state law to determine

[2] After Pearson, courts are not obligated to consider each prong in a particular order and instead have "discretion to decide whether, on the facts of a particular case, it is worthwhile to address first whether the facts alleged make out a violation of a constitutional right." Maldonado v. Fontanes, 568 F.3d 263, 269-70 (1st Cir. 2009); Pearson, 555 U.S. at 232.

Judge Doe's Comments

existence of probable cause); Finamore v. Miglionico, 15 F.4th 52, 59 (1st Cir. 2021) (same). In Massachusetts, disorderly conduct is generally any behavior which creates a substantial nuisance or threat and affects the public. See Mass. Gen. Laws ch. 272, § 53 (2022). The offense has two elements: (1) the defendant's behavior occurred in a public place, and (2) the defendant either (a) engaged in "fighting, threatening, violent behavior, or tumultuous behavior," or (b) "created a hazardous or physically offensive condition which serve[d] no legitimate purpose." See Commonwealth v. Juvenile, 334 N.E.2d 617 (Mass. 1975); Commonwealth v. Feigenbaum, 536 N.E.2d 325, 327 (Mass. 1989).

a. Disorderly Conduct Element 1: Matthews' conduct occurred in public.

There is little question that Matthews' argument with Smith satisfies the "public" element of disorderly conduct. Disorderly conduct must occur in a place that is public or to which "the public or a substantial group has access." Commonwealth v. Mulvey, 784 N.E.2d 1138, 1142 (Mass. App. Ct. 2003). Private property can be "public" even if members of the public are not present, as proximity to shopping centers, heavily used roads, or residential homes can create sufficient public access. Id.; Commonwealth v. Lopiano, 805 N.E.2d 522 (Mass. App. Ct. 2004). Although Matthews was on private property in his front yard, these facts are easily distinguishable from Mulvey, where the court found the public element was not met because the incident took place on a driveway set back from the road and blocked by a gate. 784 N.E.2d at 1140. The court's reasoning in Mulvey centered on the unlikelihood that passersby would witness the events, but the same cannot be said of an urban area like Cambridge where houses are close together and pedestrians walk by frequently. Id. at 1143. The fact that several of Matthews' neighbors actually witnessed the scene leaves little doubt that the events of July 15th occurred in "public."

b. Disorderly Conduct Element 2: Matthews did not engage in fighting, threatening, violent or tumultuous behavior nor did he create a hazardous condition with no legitimate purpose.

While the first element is satisfied, neither Matthews' physical actions nor his speech rose to the level of conduct described in the second element. As an initial matter, the parties do not dispute that Matthews did not engage in "fighting" and "violent behavior" because he did not harm, or express an intention to harm, anyone present. Fighting and violent behavior are physical acts or verbal threats upon which the defendant can immediately act. See Commonwealth v. Sinai, 714 N.E.2d 830, 834 (Mass. App. Ct. 1999). For instance, a person engages in fighting behavior if they attempt to (or succeed in) in hitting another person, or if they make a threat to injure someone which they reasonably could carry out in the moment. Id. at 830 (defendant engaged in violent behavior by attempting to strike officer); Commonwealth v. Richards, 340 N.E.2d 892, 895-96 (Mass. 1976) (defendant engaged in fighting and violent behavior by punching arresting officer). Here, because Matthews maintained his distance from everyone present at the scene and

Judge Doe's Comments

did not verbalize an intention to harm anyone, an objectively reasonable officer in such a scenario would have no reason to believe Matthews was at risk of causing harm to anyone present. That leaves us to consider if Smith had reason to believe he was engaging in threatening or tumultuous behavior or creating a hazardous or physically offensive condition with no legitimate purpose.

1. There is no evidence Matthews' conduct was threatening or tumultuous.

Matthews' speech was not of a threatening nature. In general, threatening behavior is that which indicates a future but imminent threat. Commonwealth v. Sholley, 739 N.E.2d 236, 240 (Mass. 2000). The First Amendment shields all speech from the disorderly conduct statute except for "fighting words," which is to say speech that threatens imminent violence. See Nolan v. Krajcik, 384 F. Supp. 2d 447, 459 (D. Mass. 2005). Whether speech amounts to "fighting words" depends in large part on the surrounding circumstances and context. See id. at 459-60. In Sholley, the defendant's speech warning court officials to "watch out" rose the level of "threatening" because of his position as an advocate for men accused of domestic violence and the fact that he yelled in the face of a female district attorney. 739 N.E.2d at 236, 239. In contrast, the plaintiff's shouting in Nolan did not amount to threatening speech because it took place in the context of a town meeting, where yelling and impassioned debate are the norm. 384 F. Supp. 2d at 460. Here, Matthews' speech was more like that described in Nolan: although he told Smith he was "not someone to mess with," he was instructing him refrain from conduct (like demanding his identification) rather than making an affirmative threat. Taken in context of Matthews' phone call seeking to speak with the police chief, his speech looks more like a warning about the potential repercussions of wrongfully arresting a Harvard University professor.

Matthews' physical actions were also not threatening. While Smith reported that he flailed his arms in a "menacing manner," courts have previously held that flailing one's arms is not an act threatening violence. See Lopiano, 805 N.E.2d at 525. In Lopiano, the defendant shouted about a police officer violating his civil rights and flailed his arms after the officer approached his car to investigate the safety of his passenger. The court determined his arm movements were a "physical manifestation of his agitation" and did not indicate potential danger to the officer. Id. Similarly, Matthews' arm movements coincided with the moments in which he was expressing his frustration at the officer's racial profiling. Because the flailing occurred for a brief period of time while Smith was descending the stairs and increasing his distance, no objective observer would believe that Matthew intended to cause him physical harm.

Finally, Matthews' conduct was not tumultuous because shouting in a neighborhood falls short of the tumultuous threshold. Tumultuous behavior should produce a "riotous commotion" that rises to the level of "extreme" public nuisance. Sholley, 739 N.E.2d at

---

Judge Doe's Comments

242 (quoting Juvenile, 334 N.E.2d at 628). What constitutes a riotous commotion, like with "fighting words," is contextual: a person may cause a commotion by shouting in a courthouse but will not cause a commotion when they do so outside a hotel or apartment building. Compare Sholley, 739 N.E.2d at 243, with United States v. Pasquilino, 768 F. Supp. 13, 15 (D. Mass. 1991) (finding shouting outside a hotel did not amount to tumultuous behavior), and Nuon v. City of Lowell, 768 F. Supp. 2d 323, 332-33 (D. Mass. 2011) (finding shouting outside apartment complex was not tumultuous behavior). In both Pasquilino and Nuon, the defendant's behavior was not tumultuous because the noise did not create a nuisance, and to uphold their convictions would amount to arrests on "speech alone" in violation of the statute's First Amendment protections. See Pasquilino, 768 F. Supp. at 15; Nuon, 768 F. Supp. 2d at 332. Like in Nuon, Matthews' context of a residential neighborhood has a much higher tolerance for yelling than a courthouse, to the extent that someone shouting is not extreme enough to cause a "riotous commotion."

2. There is no evidence Matthew created a hazardous or physically offensive condition with no legitimate purpose.

I conclude our consideration of the disorderly conduct offense with a brief discussion of the second facet of the conduct element, which finds disorderly conduct when a person creates a physically offensive or hazardous condition with no legitimate purpose. Assuming for the sake of argument that Matthews created such a condition, his conduct clearly had a legitimate purpose which was obvious to Smith during their interaction. A "legitimate purpose" under the statute may, but need not be, a political cause, as courts have found defendants acted with a legitimate purpose when they participated in a political protest or simply refused to move their car while picking up their child from school. See Feigenbaum, 536 N.E.2d at 328 (legitimate purpose when defendant protested at army base); Commonwealth v. Zettel, 706 N.E.2d 1158, 1159, 1161-62 (Mass. App. Ct. 1999) (legitimate purpose when mother refused to move double-parked car at school pickup). Here, Matthews had a clear purpose behind his behavior: He was shouting at the officer to express his opinion about police propensity to profile and harass Black people. Given the courts' hesitation to censor speech, including criticism of police officers, to argue that persons who have been cleared of an investigation cannot criticize officers would be to encroach on citizens' First Amendment rights. See Nuon, 768 F. Supp. 2d at 333. The Massachusetts Supreme Judicial Court's recognition that Black men are disproportionately targeted for police encounters lends further credibility to the value of Matthews' expressive activity. See Commonwealth v. Warren, 58 N.E.3d 333, 343 (Mass. 2016).

c. The first prong of qualified immunity test is satisfied.

Returning at last to our context of qualified immunity, the complete lack of foundation for Matthews' disorderly conduct charge under Massachusetts law demonstrates that there is no legitimate debate about the presence of probable cause. See

---

Judge Doe's Comments

Cox, 391 F.3d at 31. While the district court granted credence to Smith's expressed emotions of fear in his police report,[3] such a perspective misunderstands the objective nature of the probable cause test.

The probable cause test, including in the context of qualified immunity, is an objective one that does not consider the "actual motive or thought process of the officer." French v. Merrill, 15 F.4th 116, 125 (1st Cir. 2021) (quoting Holder v. Town of Sandown, 585 F.3d 500, 504 (1st Cir. 2009)). As such, whether Smith personally felt that Matthews was acting in a tumultuous or threatening manner is irrelevant. We must ask instead if *any reasonable officer* in the situation would feel that Matthews had intent to harm someone or was creating a "riotous commotion." The answer to this latter question is no: Massachusetts courts have consistently held that yelling at police officers and expressing frustration through body movements like the flailing of one's arms—in the context of a residential neighborhood—falls short of what constitutes "disorderly conduct." See, e.g., Lopiano, 805 N.E.2d at 525; Pasquilino, 768 F. Supp. at 15; Nuon, 768 F. Supp. 2d at 332.

While qualified immunity imposes a high bar in which we must find the existence of probable cause to be beyond debate or argument, I think that bar is met here because of the courts' clearly established precedents and the lack of threat and commotion at the scene. With all of this in mind, there is a sufficient basis to find that Matthews meets this first prong of overcoming Matthews' qualified immunity defense.

ii. Qualified Immunity Prong 2: The right was clearly established at the time of the violation.

The second prong of the qualified immunity test, which asks whether the violated right was clearly established at the time of the violation, itself has two requirements: (a) the plaintiff must identify controlling or persuasive authority "sufficient to send a clear signal to a reasonable official that certain conduct falls short of the constitutional norm," and (b) a reasonable defendant would understand their conduct violated the plaintiff's constitutional rights. Gray v. Cummings, 917 F.3d 1, 10 (1st Cir. 2019). The district court did not reach this prong of the test once it determined the first prong was not met.

Matthews has established the first facet of this prong. As the cases to which he points us express, the right to be free from arrest without adequate constitutional probable cause is clearly established. See, e.g., Wagenmann v. Adams, 829 F.2d 196, 209 (1st Cir.1987); Cox, 391 F.3 at 30. This long-standing rule sufficiently puts officers on notice of the necessity of having probable cause before carrying out any arrest because it a foundational rule which affects all police activity. The second facet—which requires a reasonable defendant to understand their conduct fell short of the constitutional norm—

[3] In his report about the incident, Smith said that Matthews flailed his arms in a "menacing manner" and that he decided to arrest him because of his "tumultuous and threatening behavior."

Judge Doe's Comments

tracks in large part onto the prior analysis. That is, having established (1) a reasonable officer in Smith's shoes would not believe they had probable cause to arrest Matthews and (2) a reasonable officer is on notice of the constitutional requirement for probable cause, it follows that a reasonable officer would know their conduct in arresting Matthews fell short of the constitutional norm. Thus, having satisfied the requirements to overcome Smith's qualified immunity defense, Matthews' claim may proceed.

B. Summary judgment for Smith was not appropriate and Matthews is entitled to summary judgment on his claim.

Because Smith is not entitled to the protections afforded by the doctrine of qualified immunity, we are left to decide if there remains a genuine issue of material fact on his false arrest claim under 42 U.S.C. § 1983. A genuine dispute of material fact exists if a fact that "carries with it the potential to affect the outcome of the suit" is disputed such that "a reasonable jury could resolve the point in the favor of the non-moving party." Santiago-Ramos v. Centennial P.R. Wireless Corp., 217 F.3d 46, 52 (1st Cir. 2000).

There are two elements in a false arrest claim under § 1983: (1) "the conduct complained of has been committed under color of state law," and (2) the conduct resulted in "a denial of rights secured by the Constitution or laws of the United States." Finamore, 15 F.4th at 58.[4] Having concluded by way of the qualified immunity analysis that no reasonable officer in Smith's shoes would have probable cause to arrest Matthews, there appears to be no genuine issue of material fact as to the second element. See Charron, 49 F.4th at 615 (explaining that summary judgment is appropriate when no reasonable jury could find for either side on the issue of probable cause). As such, summary judgment in favor of Matthews is appropriate here.

IV. CONCLUSION

Given all the above analysis, I recommend reversing the district court's decision to grant summary judgment to Smith and directing the court to enter summary judgment for Matthews. If you have any questions or would like to talk about the memo, please call me or email me any time at (484)-947-1970 or max_blooodgood@ca1.uscourts.gov.

[4] Matthews alleges—and Smith does not challenge—that Smith acted under color of state in his official capacity as a police officer. Because of the long-standing notion that an officer acting in their official capacity acts under color of state law, I do not pursue analysis of this element any further. See, e.g., Finamore, 15 F.4th at 58-60 (describing the elements and skipping to the second when defendant was police officer); Roche v. John Hancock Mut. Life Ins. Co., 81 F.3d 249, 254 (1st Cir. 1996) (same).

Judge Doe's Comments

Applicant Details

First Name	**Michael**
Last Name	**Blow**
Citizenship Status	**U. S. Citizen**
Email Address	**mb2000@scarletmail.rutgers.edu**
Address	**Address** Street **342 Tavistock Rd** City **Cherry Hill** State/Territory **New Jersey** Zip **08034** Country **United States**
Contact Phone Number	**2157609288**

Applicant Education

BA/BS From	**University of Pittsburgh**
Date of BA/BS	**August 2016**
JD/LLB From	**Rutgers University School of Law--Camden** **http://www.nalplawschoolsonline.org/ndlsdir_search_results.asp?lscd=23101&yr=2011**
Date of JD/LLB	**January 1, 2024**
Class Rank	**School does not rank**
Does the law school have a Law Review/Journal?	**Yes**
Law Review/ Journal	**No**
Moot Court Experience	**No**

Bar Admission

Prior Judicial Experience

Judicial Internships/ Externships	**No**
Post-graduate Judicial Law Clerk	**No**

Specialized Work Experience

Recommenders

Hinkle, Herbert
hinkle@hinkle1.com
Ferrell, Jackie
jackie.ferrell@accustaffing.com
6092063429
Shashoua, Linda
shashoua@camden.rutgers.edu
(856) 225-8619

This applicant has certified that all data entered in this profile and any application documents are true and correct.

Michael Blow
342 Tavistock Rd
Cherry HIll, NJ 08034
(215) 760-9288
Michael.Blow@rutgers.edu

The Honorable Chief Judge Juan R. Sánchez
14613 U.S. Courthouse
601 Market Street
Philadelphia, PA 19106
Courtroom 14-B

Dear Chief Judge Sánchez,

I write to you to express my wholehearted interest in applying for the 2024-2025 clerkship with your chambers. My name is Michael Blow, and I am currently a 4LE student at Rutgers Law School. At a cursory look I am a high achieving student with a 3.7 GPA. Beyond that I have taken nearly a full course load at night where I pursued the most rigorous courses available. During the day I also manage the day-to-day finances of a corporation with more than one-hundred-million dollars in yearly revenue.

One thing you will note in looking at my transcript is that during my first semester my Legal Writing grade was disappointing. As the husband to a Doctor in the ICU during the onset of the Covid019 pandemic I was beyond worn thin. The nights of my 1L year were accented by stories of beyond capacity emergency rooms and my wife's misery, and it nearly forced me to withdraw. Luckily, the situation improved and so did my writing. I would go on to achieve the highest grade in 50% of my writing intensive courses. Currently, I write as part of my job where I have been drafting our company's official correspondences to lobby in opposition to the Temporary Worker's Bill of Rights (NJ S511). In familiarizing myself with your past rulings I was extremely excited to learn that you have dealt with data rights (notably regarding the SCA).. Following my course in Privacy Essentials I found this type of law extremely intriguing and I hope to build on that experience in the future.

My resume, transcripts, and a writing sample are submitted with this application as requested. Additionally, I have recommendations from my Legal Writing Professor Linda Sashoua, Trust & Estates Professor Herbert Hinkle, and a professional recommendation from Jacqueline Ferrell.

Sincerely,
Michael

Michael C. Blow

Finance Manager & Law Student

342 Tavistock, Cherry Hill, NJ 08034 •
(215) 760-9288 •
michaelcblow@gmail.com •
linkedin.com/in/michaelblow •

SUMMARY

Accomplished university-trained analyst with excellence recognized by numerous merit-based scholarships. Education with emphasis on English, Econometrics and Statistics allow for a dynamic approach to any assignment. Illustrated, by a proven ability to adopt and implement complex systems.

PROFESSIONAL EXPERIENCE

ACCU Staffing Services – Cherry Hill, NJ

Junior Finance Manager, August 2016 – Present

- Provide FP&A ad hoc reporting to the CEO and Senior level management. Overseeing the process from design to implementation ensuring our operational and financial goals are being met
- Assist in producing monthly profit and loss reports for senior level management
- Manage day to day cash flow in conjunction with the Finance manager
- Provide a weekly book of payroll and billing summaries which is used as the primary source for data informed management action
- Trusted to execute the day-to-day personal banking needs of our C-level executives
- Manage two accounting assistants to maximize their accuracy and efficiency throughout the day.

ACCU Staffing Services – Cherry Hill, NJ

Accounting Specialist, November 2015 – August 2016

- Post an average of 2 million dollars in payments per week
- Reconciliation of AR and bank statements accuracy of payment posting
- Facilitate quarter closing by providing detailed accounting of receivables.
- Maintain a weekly payroll of over $500,000 at peak
- Work with branch offices and clients to resolve payment and time entry issues

Advanced Furniture Services – Philadelphia, PA

Project Coordinator, November 2010 – August 2011

- Coordinated all parts of the largest project to date for Advanced Furniture Services, accounting for more than 4 million dollars in furniture and services
- Met all deadlines and budget constraints throughout the year long process
- Coordinated logistics for efficiency during small installation window

Education

University of Pittsburgh – Pittsburgh, PA

B.S. in Economics, May 2015 (3.5 GPA)

President's List 4.0 GPA (5), Dean's List (3), multiple merit scholarships, and academic awards

Current Education

Rutgers School of Law – Camden, NJ

4LE Juris Doctorate, Fall 2023

3.67 GPA - Multiple Dean's list (top 25% GPA)

RECORD OF: MICHAEL BLOW

STUDENT NUMBER: 205003121

RECORD DATE: 06/09/23 PAGE: 1

Fall 2020 RUTGERS LAW SCHOOL

PROGRAM: LAW
Degree Sought: JURIS DOCTOR

TITLE	SCH	DEPT	CRS	SUP	SEC	CRED	PR GRADE
CIVIL PROCEDURE	24	601	501		11	4.0	A-
LAWR I	24	601	530		11	2.5	C+
TORTS	24	601	541		11	4.0	B
TOTAL CREDITS ATTEMPTED:						10.5	

DEGREE CREDITS EARNED: 10.5 TERM AVG: 3.096 CUMULATIVE AVG: 3.096

Spring 2021 RUTGERS LAW SCHOOL

PROGRAM: LAW
DEANS LIST

TITLE	SCH	DEPT	CRS	SUP	SEC	CRED	PR GRADE
CONSTITUTIONAL LAW	24	601	506		11	4.0	A
PROPERTY	24	601	536		11	4.0	A-
LAWR II	24	601	550		11	2.5	B+
TOTAL CREDITS ATTEMPTED:						10.5	

DEGREE CREDITS EARNED: 21.0 TERM AVG: 3.715 CUMULATIVE AVG: 3.406

Summer 2021 RUTGERS LAW SCHOOL

PROGRAM: LAW
Degree Sought: JURIS DOCTOR

TITLE	SCH	DEPT	CRS	SUP	SEC	CRED	PR GRADE
CONTRACTS	24	601	511		L2	4.0	A
TOTAL CREDITS ATTEMPTED:						4.0	

DEGREE CREDITS EARNED: 25.0 TERM AVG: 4.000 CUMULATIVE AVG: 3.501

Fall 2021 RUTGERS LAW SCHOOL

PROGRAM: LAW
DEANS LIST

TITLE	SCH	DEPT	CRS	SUP	SEC	CRED	PR GRADE
CRIMINAL LAW	24	601	516		11	4.0	A
FAMILY LAW	24	601	658		11	3.0	A-
ADMINISTRATIVE LAW	24	601	694		11	3.0	A-
TOTAL CREDITS ATTEMPTED:						10.0	

DEGREE CREDITS EARNED: 35.0 TERM AVG: 3.802 CUMULATIVE AVG: 3.587

** CONTINUED ON NEXT PAGE **

RECORD OF: MICHAEL BLOW

STUDENT NUMBER: 205003121

RECORD DATE: 06/09/23 PAGE: 2

TITLE	SCH	DEPT	CRS	SUP SEC	CRED	PR GRADE
Spring 2022 RUTGERS LAW SCHOOL						
PROGRAM: LAW						
DEANS LIST						
EVIDENCE	23	600	705	02	4.0	A-
GLOBAL TRADE LAW	24	601	547	11	3.0	A
BANKRUPTCY	24	601	689	01	3.0	A-
TOTAL CREDITS ATTEMPTED:					10.0	
DEGREE CREDITS EARNED: 45.0 TERM AVG: 3.769 CUMULATIVE AVG: 3.627						
Summer 2022 RUTGERS LAW SCHOOL						
PROGRAM: LAW						
Degree Sought: JURIS DOCTOR						
PROFESS RESPONSIB	24	601	582	91	2.0	A-
ESTATES AND TRUSTS	24	601	627	L1	3.0	A
TOTAL CREDITS ATTEMPTED:					5.0	
DEGREE CREDITS EARNED: 50.0 TERM AVG: 3.868 CUMULATIVE AVG: 3.651						
Fall 2022 RUTGERS LAW SCHOOL						
PROGRAM: LAW						
Degree Sought: JURIS DOCTOR						
ENERGY ECON &ENVIRON	23	600	690	01	3.0	B+
TRADE SECRETS	24	601	664	11	2.0	A
BUSINESS ORGS	24	601	680	11	3.0	B+
SECURED TRANSACTIONS	24	601	690	11	3.0	A-
TOTAL CREDITS ATTEMPTED:					11.0	
DEGREE CREDITS EARNED: 61.0 TERM AVG: 3.545 CUMULATIVE AVG: 3.632						
Spring 2023 RUTGERS LAW SCHOOL						
PROGRAM: LAW						
Degree Sought: JURIS DOCTOR						
ELDER LAW	24	601	606	01	3.0	A
REAL EST TRANSACTNS	24	601	668	11	3.0	A
DEPOSITION ADVOCACY	24	601	674	11	2.0	A-
PRIV LAW ESSENTIALS	24	601	787	11	2.0	A
TOTAL CREDITS ATTEMPTED:					10.0	
DEGREE CREDITS EARNED: 71.0 TERM AVG: 3.934 CUMULATIVE AVG: 3.675						

** CONTINUED ON NEXT PAGE **

RECORD OF: MICHAEL BLOW

STUDENT NUMBER: 205003121

RECORD DATE: 06/09/23 PAGE: 3

TITLE	SCH	DEPT	CRS	SUP	SEC	CRED	PR	GRADE

Summer 2023 RUTGERS LAW SCHOOL

PROGRAM: LAW
Degree Sought: JURIS DOCTOR

ALT. DISP. RES.	23	600	759		90	3.0	

TOTAL CREDITS ATTEMPTED: 3.0

DEGREE CREDITS EARNED: TERM AVG: CUMULATIVE AVG:

Fall 2023 RUTGERS LAW SCHOOL

PROGRAM: LAW
Degree Sought: JURIS DOCTOR

ARBITRATION	24	601	510		20	3.0	
CONTRACT NEGOT/DRAFT	24	601	565		20	2.0	
FIGHT FOREIGN BRIBES	24	601	587		20	2.0	
SECURITIES REGULATN	24	601	617		01	3.0	
INTELL PROP: CUR IS	24	601	728		01	2.0	

TOTAL CREDITS ATTEMPTED: 12.0

DEGREE CREDITS EARNED: TERM AVG: CUMULATIVE AVG:

Last Term Information

LAST TERM CREDIT HOURS:	10.0
LAST TERM CREDITS IN GPA:	10.0
LAST TERM POINTS IN GPA:	39.3
LAST TERM CUMULATIVE CREDITS IN GPA:	71.0
LAST TERM CUMULATIVE POINTS IN GPA:	260.9

TITLE	SCH	DEPT	CRS	SUP	SEC	CRED	PR	GRADE

***** END OF TRANSCRIPT *****

RUTGERS
School of Law | Camden

HERBERT HINKLE
Adjunct Professor
Rutgers, The State University of New Jersey
School of Law-Camden
217 N. Fifth Street
Camden, NJ 08102-1203

www-camlaw.rutgers.edu
hhinkle@camden.rutgers.edu

April 10, 2023

Re: Michael Blow

To Whom It May Concern:

I am writing in support of Mr. Blow's application for a judicial clerkship.

Mr. Blow took Estates & Trusts with me in the summer of 2022 and Elder Law this current semester. Mr. Blow is an outstanding student. He is highly intelligent, articulate and good natured. He is always prepared for class and actively engages in classroom discussion. Mr. Blow received an A in the summer course and I expect a similar result this semester.

For all of my courses students are required to write a short paper on a related topic and then present the paper to the class. For the past year I have encouraged students to write about international topics. Last summer, Mr. Blow wrote about inheritance in India, and this semester he wrote about the care of the elderly in India. Both papers were well-written and thoughtful. The classroom presentations were poised and confident. On both occasions he generated a lot of interest and questions from his classmates.

Mr. Blow is one of the finest students I have encountered in nearly 15 years of teaching. He possesses strong academic abilities and excellent inter-personal skills. I believe he will interact well with judges and courtroom staff as well as the attorneys and litigants who come before the court. He will be well organized and prepared. He will follow instructions to the letter. I recommend him to you highly and without reservation.

If I can provide more information, please contact me through my former law office: Hinkle, Prior & Fischer, P.C., 2651 Main Street, Lawrenceville, New Jersey 08648, by telephone (609) 577-1140, or e-mail. hinkle@hinkle1.com.

Sincerely,

Herbert D. Hinkle

HDH: kt

Jacqueline Ferrell
Finance Manager
Accu Staffing Services
911 N. Kings Highway
Cherry Hill, NJ 08034
Jacqueline.ferrell@accustaffing.com
(609) 206-3429

The Honorable Chief Judge Juan R. Sánchez
14613 U.S. Courthouse
601 Market Street
Philadelphia, PA 19106
Courtroom 14-B

Dear Judge,

I am writing to highly recommend Michael Blow for the clerkship position with your esteemed court. Having had the pleasure of working with Michael closely for the past eight years, I can confidently attest to his exceptional intelligence, remarkable writing ability, and his unwavering dedication to excellence.

As an employee, Michael consistently demonstrates a level of intelligence and critical thinking that surpasses his peers. His intellectual curiosity is unparalleled, and he has a remarkable ability to grasp complex concepts swiftly and effectively. Throughout our time together, I have witnessed him dissect intricate issues with precision, providing well-reasoned arguments and insightful analyses. Most recently providing useful information on a bill passed in NJ that affected our industry. Michael assisted our organization and others in the industry by writing letters to Senators, providing detailed interpretations of the bill, offering written recommendations, and speaking on our behalf at the NJ Senate Judiciary. His work exhibits a rare combination of clarity, conciseness, and persuasive power. His ability to communicate complex ideas effectively sets him apart as an exceptional writer.

Furthermore, Michael consistently delivers work of the highest quality. He approaches every task with meticulous attention to detail, ensuring accuracy and thoroughness in his research and analysis. He takes great pride in his work and consistently meets deadlines without compromising the quality of his output. His strong work ethic and commitment to excellence make him an ideal candidate for a clerkship position, where precision and attention to detail are of utmost importance.

In addition to his exceptional intellectual capabilities and outstanding writing skills, Michael is a pleasure to work with. He possesses strong interpersonal skills and is a reliable team player. He actively engages in collaborative discussions, respectfully considering alternative viewpoints and contributing valuable

insights. He is highly professional, maintaining a positive attitude even in challenging situations, and his dedication and enthusiasm are contagious.

I have no doubt that Michael would make an outstanding addition to your clerkship program. His intellectual acuity, exceptional writing ability, and unwavering commitment to excellence make him an ideal candidate. I wholeheartedly recommend him for the clerkship position with your court and I am confident that he will excel and contribute significantly to the work of the court.

Please feel free to contact me if you require any further information or if you would like to discuss Michael's qualifications in more detail. Thank you for considering his application.

Sincerely,

Jacqueline Ferrell

June 12, 2023

The Honorable Juan Sanchez
James A. Byrne United States Courthouse
601 Market Street, Room 14613
Philadelphia, PA 19106-1729

Dear Judge Sanchez:

It is my distinct pleasure to recommend Michael Blow for a full-time judicial clerkship beginning in the fall of 2024. I have been an Adjunct Professor at Rutgers-Camden School of Law for twenty-four years, as well as a full-time appellate attorney as an Assistant Prosecutor in Camden County, New Jersey, for twenty-five years (retired as chief of the appeals unit), and I was privileged to have had Michael as a student in three semesters of law school, including in my 2020-2021 Legal Analysis, Writing & Research (LAWR) I & II classes, as well as in my 2022 Professional Responsibility course. Michael has proved to be a reliable and talented student, and a consistent and competent legal writer.

In two semesters of intensive writing courses, Michael consistently demonstrated a natural ability to analyze the law, and write about the issues in a clear and precise manner. And although Michael demonstrated raw talent and instinct with this material from the start, his family's sacrifice during the fall semester—being married to an ICU doctor during those early months in the pandemic—understandably kept him from achieving his full potential. It is clear that Michael continued to grow and succeed in both written and oral legal reasoning and communication. Michael delivered a distinctly polished oral argument in the spring semester, highly-responsive to the judges' questions, earning an "A" in that competitive phase of the course.

Finally, Michael has always demonstrated excellent time-management skills, balancing school, family, and full-time employment. He is industrious and diligent, always willing to help others while unfailingly managing his own workload, and while maintaining an easygoing, positive demeanor, making him a pleasure to be around. I am confident that Michael will bring value to any clerkship.

Respectfully,

Linda A. Shashoua, Esq.
Adjunct Professor
Legal Research & Writing Program

Linda Shashoua - shashoua@camden.rutgers.edu - (856) 225-8619

Michael C. Blow
1 Big Law Lane
Camden, NJ 08030
Mb2000@Rutgers.edu

UNITED STATES DISTRICT COURT
FOR THE DISTRICT COURT OF NEW JERSEY

CAMPELLS SOUP CO.,

Plaintiff,

vs.

JOHN WASHINGON, PROGRESSO, AND GENERAL MILLS INC.,

Defendant.

Case No.: 1

Complaint and Demand for a Jury Trial

Dated this 1st of November 2022.

COMPLAINT

Plaintiff Campbell Soup Company, (hereinafter "Campbell Soup"), by and through their attorney, Michael Blow Esq. LLC, alleges as follows against Defendants John Washington, Progresso, and General Mills Inc. (collectively "Defendants"):

NATURE OF THE ACTION

1. This is a civil action brought against Defendants for civil penalties and injunctive relief pursuant to the Defend Trade Secrets Act ("DTSA"). This action arises from the misappropriation of Campbell Soup's trade secrets by Washington which allowed Progresso, a

wholly owned General Mills Inc. ("General Mills") subsidiary, to become instantly competitive in the jam market space. This accelerated success was as a direct result of trade secrets that Campbell Soup has spent more than $2 million dollars and years of development on.

2. In, or about, 2009 Campbell Soup hired Defendant John Washington to be a chef for the company. Campbell Soup specifically sought out Washington to create a cranberry jam due to his experience in manufacturing jams and jellies.

3. At the time of Washington's hiring, he was required to sign a Non-Disclosure Agreement ("The Washington Agreement").

4. The Washington Agreement unambiguously states that any recipe developed by Washington is the sole property of Campbell Soup. Additionally, Washington is prohibited from disclosing those recipes which he developed while at Campbell Soup to people outside of the company.

5. From the time of his hiring in 2009 until he left Campbell Soup in 2014, Washington had access to, and personally developed, proprietary information that formed the basis of valuable trade secrets.

6. In, or about, 2014 Washington left Campbell soup for Progresso, a wholly owned subsidiary of General Mills Inc. which is a direct competitor of Campbell Soup.

7. Promptly upon joining Progresso, Washington began misappropriating valuable information exclusively owned by Campbell Soup. This proprietary information, which was subject to the Washington Agreement, was used to greatly benefit General Mills at the cost of Campbell Soup.

8. Washington misappropriated Campbell Soup's trade secrets including, but not limited to, specifics of highly successful recipes used in industry leading food products and quality assurance methods that were known only to Washington.

9. The unique, and valuable, qualities that made Campbell Cranberry Spread a leading jam in the market were developed exclusively by Washington at the time he was a chef at Campbell Soup and subject to the Washington Agreement.

10. The recipe and proprietary cooking process of Campbell Cranberry Jam gives the jam several unique qualities. Even though there are potentially thousands of other jams on the market, the characteristics of Campbell Cranberry Jam are shared by only one other jam – the competing jam sold by Progresso.

11. This competing jam was brought to market within one month of hiring Washington. Illustratively, it took Campbell Soup took over one year and a million dollars to develop the original recipe.

12. Campbell Soup seeks monetary damages for the unlawful misappropriation of trade secrets by Defendants. Additionally, Campbells Soup seeks injunctive relief barring the sale of any Progresso or General Mills products found to rely on Campbell trade secrets. Lastly, Campbell Soup seeks disgorgement of all profits by Defendants resulting from the misappropriation of Campbell trade secrets and the removal and return of their trade secrets.

PARTIES

13. Plaintiff Campbell Soup is a corporation organized under the laws of the state of New Jersey, headquartered at 1 Campbell Place, Camden New Jersey 08103. Campbell Soup is one of the oldest, and most trusted, companies in America specializing in the manufacturing and marketing of familiar branded food products.

14. Campbell Soup is informed and believes that Defendant Washington is an individual who resides at 1 Boyardee Ln., Medford, NJ 08055.

15. Progresso is a wholly owned subsidiary of General Mills Inc. and headquartered at 500 W Elmer Rd, Vineland, New Jersey, 08360.

16. General Mills is a corporation organized under the laws of the State of Delaware and headquartered at 1 General Mills Blvd, Minneapolis, MN 55426.

JURISDICTION

17. This Court has subject matter jurisdiction over Campbells Soup's federal trade secrets claim pursuant to 18 U.S.C § 1832-39 ("DTSA").

18. As set forth below, the Court has personal jurisdiction over Washington and General Mills as a substantial part of the events giving rise to this complaint occurred in the State of New Jersey. Additionally, Washington was employed at all relevant times in the State of New Jersey. Venue then is in the United States District Court for New Jersey pursuant to 28 U.S.C. §1391(b)(1) and (2).

FACTS COMMON TO ALL COUNTS

19. Campbell Soup is an international food company headquartered in Camden, New Jersey. It has been a trusted and iconic provider of food products for more than 150 years.

20. In or about 2009, Campbell's Soup hired James Washington for his extensive experience in jams and jellies manufacturing.

21. Prior to hiring Washington, he was required to sign a Non-Disclosure Agreement which was used to protect the development of Campbell Soup's trade secrets.

22. In Washington's capacity at Campbell's Soup he developed, and had near exclusive access to, Campbell's trade secrets and other confidential and proprietary information relating to jams and jellies.

23. To facilitate development of new products, Washington was provided with $1 million dollars in funding, a year of research and development, and a team of several food technologists who were also subject to the Washington Agreement.

24. Washington was paid a salary over $200 thousand dollars a year during his five-year tenure at Campbell's Soup.

25. Following extensive research and development efforts Campbell Cranberry Spread's sales increased year over year until it reached $30 million annually.

26. Prior to Washington's departure and subsequent launch of Progresso's Cranberry Jam, Campbell's Cranberry Spread was the highest grossing jam on the market.

Campbell's Protection of Its Trade Secret

27. Prior to being hired Washington, and the food technologists that worked under him, were required to sign the Washington Agreement. This agreement was a non-disclosure agreement that was designed to protect the valuable trade secrets resulting from their work.

28. The Washington Agreement that Washington agreed to stipulate the following:

a. Any recipes developed by Washington during his employment were solely owned by Campbell Soup.

b. Washington was not allowed to disclose the content of any recipes developed for Campbell Soup to any outside party.

29. Access to recipes developed by Washington, and misappropriated by Defendants, was accessible only to Washington, his team, and c-suite executives at Campbell Soup.

30. Great effort was used to ensure that the recipes in question were maintained electronically on a secure server.

Defendant's Misappropriation of Campbell's Trade Secrets

31. Averments of paragraphs 1 through 30 hereof are incorporated herein by reference as if set forth in entirety.

32. The methods, research and recipes developed by Washington, for the benefit of Campbell Soup such as, but not limited to, the recipe for Campbell Cranberry Spread is highly confidential.

33. This trade secret derives its independent economic value by not being accessible, nor ascertainable, by proper means.

34. Additionally, a large part of the success of Campbell's Cranberry Spread is that Washington personally evaluates the jam while it is being produced. During this process Washington exercises Campbell's proprietary methods to determine when to progress the jam through the various cooking stages.

35. The jam product space is highly competitive. Campbell Soup derives much of its profit by differentiating its products from competing jams. The recipe that has proven to differentiate Campbell Soup's recipe from others in the market is not publicly available or ascertainable by proper means.

36. After the launch of General Mills' competing cranberry jam, which shares the unique characteristics that has made Campbell's Cranberry Spread a leader in the industry, Campbell Soup's revenue dropped by 33%.

37. On information or belief, General Mills either accepted such information representing Campbell Soup's trade secret from Defendant Washington, or General Mills has remained willfully ignorant to Washington's efforts to misappropriate trade secrets.

38. Prior to Washington's arrival to General Mills, it did not have a cranberry jam on the market. However, within one month of hiring Washington it was able to bring an identical jam to market that took Campbell Soup a year and more than a million dollars to develop.

COUNT I – (James Washington, Progresso, and General Mills)
Violation of the Defend Trade Secrets Act ("the DTSA"), 18 U.S.C. 1832-1839

39. The averments of paragraphs 1 through 38 hereof are incorporated herein by reference as if set forth in their entirety.

40. The recipes, methods, and knowledge developed by Campbell Soup including but not limited to the actual recipe of Campbell's Cranberry Spread, the propriety methods of quality assurance involving Washington as chef, as well as various other trade secrets used by Campbell Soup are highly confidential.

41. This information derives its independent economic value by not being accessible through proper means to its competitors. In the highly competitive food market, the ability to differentiate your products is of great value. For example, there was no other jam on the market that was like Campbell's Cranberry Jam which is what lead to it being the best-selling product in the space.

42. Campbell's Soup has taken extensive steps to ensure that this information stayed protected so that they could continue to derive value from their multimillion-dollar investments. This included limiting the access of such trade secrets and confidential information to a small group of people including only Washington, his team, and C-level executives at Campbell. Additionally, Washington and his team were required to sign a non-disclosure agreement that expressly classifies the recipes resulting from their research as owned by Campbell Soup. Furthermore, the Washington Agreement expressly forbid disclosure of Campbell Soup's trade secrets to anyone outside of the company. Lastly, this information was stored electronically on secured servers where access was strictly controlled.

43. Campbell Soup's trade secrets relate to products used in, or intended for use in, interstate commerce.

44. Campbell Soup's trade secrets are not publicly available through proper means. Nor, are these methods considered general industry practices and are solely proprietary methods developed for Campbell's Soup to create products customers prefer.

45. Campbell Soup has spent more than $2 million dollars in funding and salaries for Washington and his team. Additionally, they have dedicated more than a year of use of their facilities to develop the methods that Defendant's have misappropriated. Therefore, they are entitled to exclusive use and benefit of this confidential information.

46. On information and belief, Progresso, and General Mills either accepted Campbell Soup's protected information knowing it was being misappropriated by Washington, or Progresso and General Mills remained willfully ignorant in failing to prevent Washington from misappropriating Campbell's trade secrets.

47. While it took millions of dollars and years of development for Campbell Soup to bring their Cranberry Spread to market, Defendants were able to bring an identical jam to market within one month of hiring Defendant Washington. Neither Progresso nor General Mills had any jam or jelly on the market before this time.

48. As a consequence of the foregoing, Campbell has suffered and will continue to suffer irreparable harm and loss. The amount sought to remedy the loss of market share, diluting of the value of its trade secret and other damages is an amount to be determined at trial.

49. WHEREFORE, Plaintiff, Campbell Soup, requests that this Court enter judgement against James Washington, Progresso, and General Mills and award the following relief:

a. Permanent injunctive relief restraining Defendants, or any member of their respective companies, from the continued use, and benefit of, Campbell Soup's trade secret.
b. Ordering the defendants to promptly return to Campbell's Soup any and all documents reflecting Campbell Soup's trade secrets;
c. Awarding Campbell Soup Company monetary damages to which it is legally entitled;
d. Awarding Campbell Soup Company exemplary damages of twice the damages proven under the DTSA;
e. Awarding Campbell Soup Company reasonable attorney's fees and costs; and
f. Any other relief this Court deems just and appropriate.

JURY DEMAND

The Plaintiff demands trial by a jury on all of the triable issues of this complaint, pursuant to New Jersey Court Rules 1:8-2(b) and 4:35-1(a).

Dated: November 1, 2022

Applicant Details

First Name	**Blaine**
Last Name	**Bonis**
Citizenship Status	**U. S. Citizen**
Email Address	**b.blaine@wustl.edu**
Address	**Address** **Street** **1031 Highlands Plaza Dr W, 305** **City** **St. Louis** **State/Territory** **Missouri** **Zip** **63110** **Country** **United States**
Contact Phone Number	**2253336047**

Applicant Education

BA/BS From	**Tulane University**
Date of BA/BS	**May 2019**
JD/LLB From	**Washington University School of Law** **http://www.nalplawschoolsonline.org/ndlsdir_search_results.asp?lscd=42604&yr=2014**
Date of JD/LLB	**May 13, 2024**
Class Rank	**Not yet ranked**
Law Review/ Journal	**Yes**
Journal(s)	**Journal of Law & Policy**
Moot Court Experience	**Yes**
Moot Court Name(s)	**Giles Rich Sutherland Moot Court**

Bar Admission

Prior Judicial Experience

Judicial Internships/ Externships	**Yes**
Post-graduate Judicial Law Clerk	**No**

Specialized Work Experience

Recommenders

Osgood, Russell
rosgood@wustl.edu
Hollander-Blumoff, Rebecca
rhollander@wustl.edu
314-935-6043
Collins, Kevin
kecollins@wustl.edu
(314) 935-7857

This applicant has certified that all data entered in this profile and any application documents are true and correct.

June 11, 2023

The Honorable Juan Sanchez
James A. Byrne United States Courthouse
601 Market Street, Room 14613
Philadelphia, PA 19106-1729

Dear Judge Sanchez:

I am a rising third-year law student at Washington University School of Law in St. Louis, and I am writing to apply for a clerkship in your chambers beginning in 2024. My prior professional experience combined with my natural curiosity and strong work ethic will enable me to contribute to the diverse range of cases before the court. In addition, as a first-generation law student, I believe a clerkship in your chambers will allow me to gain practical experience analyzing a wide range of legal issues and offer me the opportunity to further strengthen my research and writing skills while assisting in the mission of the court.

I became interested in a clerkship while working in Judge Noce's chambers in the fall of last year. While working in Judge Noce's chambers, I've drafted and edited opinions in a variety of areas ranging from habeas relief and social security appeals to Section 1983 claims and 12b(6) motions to dismiss. I've also assisted the Judge in preparing for hearings. Observing hearings as well as engaging in discussions with the Judge have strengthened my understanding of the litigation process and successful advocacy techniques. Additionally, I've had the opportunity to develop many of the core skills I believe are the basis of any successful legal work; research, analysis, writing, and communication. Not only did the experience sharpen my research and writing skills, but it also taught me to how to prioritize competing deadlines and projects without sacrificing excellent work product.

Enclosed, please find my resume, transcript, and writing sample. My writing sample is a memo and order I prepared during my externship with Judge David Noce. The following individuals are submitting letters of recommendation separately and welcome inquiries in the meantime:

Dean Russell Osgood
Washington University School of Law
rosgood@wustl.edu
(314) 935-4042

Professor Rebecca Hollander-Blumoff
Washington University
School of Law
rhollander@wustl.edu
(314) 935-6403

Professor Kevin Emerson Collins
Washington University
School of Law
kecollins@wustl.edu
(314) 935-6403

I am confident that my background, experience, and passion for service will help me aid your work and advance the mission of the court. Thank you for your consideration.

Sincerely,
Blaine Bonis

Blaine Bonis

1031 Highlands Plaza Dr. W Apt. #305, St. Louis, MO 63110 | b.blaine@wustl.edu | 225-333-6047

EDUCATION

Washington University School of Law — St. Louis, MO
Juris Doctor Candidate | GPA: 3.57 — May 2024
Honors & Activities: Student Bar Association Representative
Dean Student Advisory Council
Scholar in Law Scholarship Award
Staff Editor, Journal of Law & Policy 2022
Chief Sources Editor, Journal of Law & Policy 2023
Giles Sutherland Rich Memorial Moot Court Team

Tulane University — New Orleans, LA
Bachelor of Science in Neuroscience and Music — May 2019
Honors & Activities: Orchestra, *1st Chair Bassist*
Marching Band, *Drumline, Section Leader*
Kappa Kappa Psi, *Vice President*

EXPERIENCE

Carl Zeiss AG — St. Louis, MO
Summer Internship — May 2023-August 2023
- Assisted attorneys in patent research, prosecution, litigation, and filing, assisted in IP and trade secret legal issues and other in-house legal issues. Communicated with legal teams in different countries to coordinate filings and proceedings.

United States District Court Eastern District of Missouri - Judge David Noce — St. Louis, MO
Extern — August 2022-December 2022
- Prepared and edited draft orders and opinions for the Judge on a variety of legal issues.
- Helped the Judge prepare for and assisted him during hearings.s

Missouri State Public Defender System – Children's Defense Team — St. Louis, MO
Summer Internship — May 2022-July 2022
- Researched issues in client's cases, analyzed and cataloged discovery materials, wrote memos and motions, assisted supervising attorneys in court and depositions, conducted client visits, met with experts and witnesses.

Ascension Parish Clerk of Court — Baton Rouge, LA
Election Commissioner — November 2020-April 2021
- Ran voting center for over 1000 voters during state and federal elections
- Maintained voting records, informed voters of and protected their voting rights
- Enforced state health guidelines to protect voters and election officials from COVID-19 pandemic

Sole Proprietorship — New Orleans, LA
In Person Assistant — June 2019-December 2020
- Worked one-on-one with individuals who have Alzheimer's and other dementia-related diseases to adapt their lives to their condition, as well as supporting and assisting their families
- Created records to document their lives and assist and support their families

Green Waves Brass Band — New Orleans, LA
Musician — August 2015-May 2019
- Learned large musical repertoire on a schedule
- Performed at events including Tulane football games, admissions events, weddings, and concerts.

How to Authenticate This Official Transcript

This official transcript has been delivered to the recipient, and is intended solely for use by that recipient. It is not permissible to replicate this document or forward it to any person or organization other than the identified recipient. Release of this record or disclosure of its contents to any third party without written consent of the record owner is prohibited.

Printed Transcript:
If you have received this transcript as a printed document, you may verify its authenticity by testing the security features noted on the document.

Electronic Transcript:
This document is official when downloaded by a Parchment Receive member from their inbox.
If receiving via email, this official transcript has been digitally signed and therefore contains special characteristics. This document will reveal a digital certificate that has been applied to the transcript, and for optimal results, we recommend that this document is viewed with the latest version of Adobe® Acrobat or Adobe® Reader. This digital certificate will appear in a pop-up screen or status bar on the document, display a blue ribbon, and declare that the document was certified by Parchment, with a valid certificate issued by GlobalSign CA for Adobe®. This document certification can be validated by clicking on the Signature Properties of the document.

The Blue Ribbon Symbol: The blue ribbon is your assurance that the digital certificate is valid, the document is authentic, and the contents of the transcript have not been altered.

Invalid: If the transcript does not display a valid certification and signature message, reject this transcript immediately. An invalid digital certificate display means either the digital signature is not authentic, or the document has been altered. The digital signature can also be revoked by the transcript office if there is cause, and digital signatures can expire. A document with an invalid digital signature display should be rejected.

Author Unknown: Lastly, one other possible message, Author Unknown, can have two possible meanings: The certificate is a self-signed certificate or has been issued by an unknown or untrusted certificate authority and therefore has not been trusted, or the revocation check could not complete. If you receive this message make sure you are properly connected to the internet. If you have a connection and you still cannot validate the digital certificate on-line, reject this document.

The current version of Adobe® Reader is free of charge, and available for immediate download at http://www.adobe.com.

Washington University in St. Louis

Office of the University Registrar

Record Of: **Bonis, Blaine**
Student ID Number: 502379

Current Programs Of Study:
JURIS DOCTOR

Transcript Issued 06/06/2023 To:

RECIPIENT AS DESIGNATED BY STUDENT

Fall Semester 2021

LEGAL RESEARCH METHODOLOGIES I	LAW	W74 500D	0	CIP
LEGAL PRACTICE I: OBJECTIVE ANALYSIS AND REASONING (MOUL)	LAW	W74 500H	2.0	B
PROPERTY (D'ONFRO)	LAW	W74 507X	4.0	A-
TORTS (NORWOOD)	LAW	W74 515F	4.0	A-
CONSTITUTIONAL LAW I (OSGOOD)	LAW	W74 520C	4.0	A

Enrolled Units 14.0 Semester GPA 3.64 Cumulative Units 14.0 Cumulative GPA 3.64

Spring Semester 2022

LEGAL RESEARCH METHODOLOGIES II	LAW	W74 500E	1.0	HP
LEGAL PRACTICE II: ADVOCACY (MOUL)	LAW	W74 500J	2.0	B
CONTRACTS (SHILL)	LAW	W74 501K	4.0	A-
CRIMINAL LAW (DIAMANTIS)	LAW	W74 502U	4.0	B
NEGOTIATION (TOKARZ/SHIELDS)	LAW	W74 503G	1.0	CR
CIVIL PROCEDURE (LEVIN)	LAW	W74 506	4.0	B+

Enrolled Units 16.0 Semester GPA 3.43 Cumulative Units 30.0 Cumulative GPA 3.53

Fall Semester 2022

ELECTION LAW (LEVIN)	LAW	W74 529D	2.0	A-
INTERNATIONAL HUMAN RIGHTS LAW (SADAT)	LAW	W74 619C	3.0	B+
PATENT LAW	LAW	W74 623N	3.0	B+
FEDERAL COURTS (HOLLANDER-BLUMOFF)	LAW	W74 634G	4.0	B
JUDICIAL CLERKSHIP EXTERNSHIP	LAW	W74 654E	3.0	CR
JOURNAL OF LAW AND POLICY	LAW	W75 616S	1.0	CR

Enrolled Units 16.0 Semester GPA 3.40 Cumulative Units 46.0 Cumulative GPA 3.49

Spring Semester 2023

EVIDENCE (ROSEN)	LAW	W74 547K	3.0	A
LAW AND PSYCHOLOGY (HOLLANDER-BLUMOFF)	LAW	W74 550B	3.0	A-
LEGAL PROFESSION (JOY)	LAW	W74 563U	3.0	A-
SPEECH, PRESS, & THE CONSTITUTION (MAGARIAN)	LAW	W74 609M	3.0	A
ADVANCED PATENT LAW (COLLINS)	LAW	W74 623K	3.0	A
INTELLECTUAL PROPERTY MOOT COURT TEAM - PATENTS AND COPYRIGHTS WHEELOCK/COLLINS)	LAW	W75 606M	1.0	CR
JOURNAL OF LAW & POLICY	LAW	W75 616S	1.0	CR

Enrolled Units 17.0 Semester GPA 3.77 Cumulative Units 63.0 Cumulative GPA 3.57

Keri A. Disch, University Registrar

TO VERIFY: TRANSLUCENT GLOBE ICONS MUST BE VISIBLE WHEN HELD TOWARD A LIGHT SOURCE

Washington University in St. Louis

Office of the University Registrar

Record Of: **Bonis, Blaine**

Student ID Number: 502379

Spring Semester 2023

********** END OF TRANSCRIPT **********

Keri A. Disch, University Registrar

Washington University in St. Louis
Office of the University Registrar
One Brookings Drive, Campus Box 1143, St. Louis, MO 63130-4899 www.registrar.wustl.edu 314-935-5959

Washington University in St. Louis is accredited by the Higher Learning Commission www.hlcommission.org, and its schools by various professional accrediting bodies. The CEEB code is 6929.

Transcript Nomenclature
Transcripts issued by Washington University are a complete and comprehensive record of all classes taken unless otherwise indicated. Each page lists the student's name and Washington University student identification number. Transcript entries end with a line across the last page indicating no further entries.

Degrees conferred by Washington University and current programs of study appear on the first page of the transcript. The Degrees Awarded section lists the date of award, the specific degree(s) awarded and the major field(s) of study.

Courses in which the student enrolled while at Washington University are listed in chronological order by semester, each on a separate line beginning with the course title followed by the academic department abbreviation, course number, credit hours, and grade.

Honors, awards, administrative actions, and transfer credit are listed at the end of the document under "Distinctions, Prizes and Awards" and "Remarks".

Course Numbering System
In general course numbers indicate the following academic levels: courses 100-199 = first-year; 200-299 = sophomore; 300-399 = junior; 400-500 = senior and graduate level; 501 and above primarily graduate level. The language of instruction is English unless the course curriculum is foreign language acquisition.

Unit of Credit/Calendar
Most schools at Washington University follow a fifteen-week semester calendar in which one hour of instruction per week equals one unit of credit. Several graduate programs in the School of Medicine and several master's programs in the School of Law follow a year-long academic calendar. The Doctor of Medicine program uses clock hours instead of credit hours.

Academic and Disciplinary Notations
Students are understood to be in good academic standing unless stated otherwise. Suspension or expulsion, i.e. the temporary or permanent removal from student status, may result from poor academic performance or a finding of misconduct.

Grading Systems
Most schools within Washington University employ the grading and point values in the Standard column below. Other grading rubrics currently in use are listed separately. See www.registrar.wustl.edu for earlier grading scales, notably for the School of Law, Engineering prior to 2010, Social Work prior to 2009 and MBA programs prior to 1998. Some programs do not display GPA information on the transcript. Cumulative GPA and units may not fully describe the status of students enrolled in dual degree programs, particularly those from schools using different grading scales. Consult the specific school or program for additional information.

Rating	Grade	Standard Points	Social Work
Superior	A+/A	4	4
	A-	3.7	3.7
	B+	3.3	3.3
Good	B	3	3
	B-	2.7	2.7
	C+	2.3	2.3
Average	C	2	2
	C-	1.7	1.7
	D+	1.3	0
Passing	D	1	0
	D-	0.7	0
Failing	F	0	0

Grade	Law Values (Effective Class of 2013)
A+	4.00-4.30
A	3.76-3.94
A-	3.58-3.70
B+	3.34-3.52
B	3.16-3.28
B-	3.04-3.10
C+	2.92-2.98
C	2.80-2.86
D	2.74
F	2.50-2.68

Additional Grade Notations			
AUD	Audit	NC/NCR/NCR#	No Credit
CIP	Course in Progress	NP	No Pass
CR/CR#	Credit	P/P#	Pass
E	Unusually High Distinction	PW	Permitted to Withdraw
F/F#	Fail	R	Course Repeated
H	Honors	RW	Required to Withdraw
HP	High Pass	RX	Reexamined in course
I	Incomplete	S	Satisfactory
IP	In Progress	U	Unsatisfactory
L	Successful Audit	W	Withdrawal
LP	Low Pass	X	No Exam Taken
N	No Grade Reported	Z	Unsuccessful Audit

(revised 11/2020)

Washington University in St. Louis
SCHOOL OF LAW

May 10, 2023

The Honorable Juan Sanchez
James A. Byrne United States Courthouse
601 Market Street, Room 14613
Philadelphia, PA 19106-1729

RE: Recommendation for Blaine Bonis

Dear Judge Sanchez:

I am writing to recommend strongly Blaine Bonis, a rising third-year student at Washington University School of Law student, for a clerkship. I am the Dean and a Professor of Law here at Washington University School of Law. Before this, I was the President of Grinnell College (1998-2010) and, before that, the Dean (1988-1998) and a faculty member (1980-1998) at Cornell Law School in Ithaca, New York.

I first got to know Blaine when I had him as a student in a large section of our introductory Constitutional Law course (structure and functions) in the fall of 2021. Blaine wrote a balanced, well-written, and substantive paper on the scope of First Amendment protection for students in public schools. In a class filled with very good students, Blaine stood out. He spoke up clearly and intelligently and then completed a solid final examination. He received a high A in the course.

Blaine is a fine student, and I expect that he will continue to be a strong performer through the end of his academic time here. Blaine serves on my Dean Student Advisory Committee (an advisory committee to the Dean on any topic the student members wish to raise). If you interview him, you will see he is a little quiet at first, but as time has passed, Blaine has proven to be a dynamic and frequent contributor to our academic and social life. Blaine's thoughtfulness, diligence, good spirit, and high intelligence will help him become a fine clerk. He interacts well with his colleagues and will do well with others in chambers. Finally, I want to add that he is an independent and creative thinker.

If you or anyone in your chambers would like to speak further about this excellent candidate, I am glad do so (Cell: 641-821-3712).

Best,

/s/

Russell K. Osgood
Dean
Professor of Law

Washington University School of Law
One Brookings Drive, MSC 1120-250-258
St. Louis, MO 63130
(314) 935-6420

Russell Osgood - rosgood@wustl.edu

Washington University in St. Louis
SCHOOL OF LAW

June 9, 2023

The Honorable Juan Sanchez
James A. Byrne United States Courthouse
601 Market Street, Room 14613
Philadelphia, PA 19106-1729

RE: Recommendation for Blaine Bonis

Dear Judge Sanchez:

I am very glad to recommend Blaine Bonis for a clerkship in your Chambers. Blaine is an earnest, serious, and passionate student who I've been very lucky to teach in two different classes.

I initially met Blaine in my Federal Courts class in Fall 2022. As you know, Federal Courts is one of the most difficult in the law school curriculum. We cover complex topics including justiciability doctrine, federal court jurisdiction and the scope of Congress's control thereof, non-Article III courts, sovereign immunity, and more. Blaine sat in the front row and was a steady and reliable contributor to class discussion. His passion for the material and his clear grasp of the doctrine and its nuances made him a consistently welcome contributor who I got to know well despite the class size of 88 students. I enjoyed talking with him outside of class about important issues in the federal docket, and he had an impressive energy for law, legal doctrine, and legal issues that will clearly be an enormous asset to the profession. Blaine's ultimate grade on the anonymously graded exam, a B, was simply not reflective of the immense value and energy he brought to the class, and was likely a function of our very strict curve combined with the difficulty of the exam.

I was so glad to have Blaine in class again in the spring of 2023 in my Law & Psychology class. Blaine also sat up front in this class, and, out of 52 students, continued to be a stellar contributor who raised important, nuanced, and sophisticated points. In the class, we often discussed how psychological research might affect a wide variety of legal areas, and Blaine was a reliable source of connection with important doctrines outside of class coverage. His real-world knowledge of and interest in legal practice and doctrine were invaluable to our class discussion and I was grateful for his participation. On the final exam, Blaine earned a grade of A-, just shy of an A. He demonstrated strong writing skills and a thoughtful perspective on the issues of the course, as well as terrific preparation and knowledge of our course materials.

Blaine is a serious and passionate student whose work ethic, engagement, and determination will be an asset to your chambers. His terrific experience as an extern with a federal judge helps to demonstrate how successful he will be as a law clerk. He is truly a kind person whose commitment to the law and to justice are palpable. Students like Blaine make me feel positive about the future of legal practice in our country, and I am so glad to recommend him to you.

Best,

/s/

Rebecca Hollander-Blumoff
Vice Dean for Research and Faculty Development
Professor of Law

Washington University School of Law
One Brookings Drive, MSC 1120-250-258
St. Louis, MO 63130
(314) 935-6420

Washington University in St. Louis
SCHOOL OF LAW

April 12, 2023

The Honorable Juan Sanchez
James A. Byrne United States Courthouse
601 Market Street, Room 14613
Philadelphia, PA 19106-1729

RE: Recommendation for Blaine Bonis

Dear Judge Sanchez:

I write to recommend Blaine Bonis for a clerkship in your chambers. Blaine has a sharp and inquisitive mind that he wraps in a humble, deferential persona. I believe he will be a great asset to the judge who eventually hires him.

I only met Blaine at the beginning of this semester, but I have a clear picture of his abilities because I have worked quite intensively with him since then. He not only enrolled in my Advanced Patent Law course this semester, but he also earned a spot on the Washington University Giles Rich moot court team that I coach. Simply put, Blaine has excelled in both contexts.

Advanced Patent Law is a small course with under twenty students, and I run it like a seminar, engaging individual students in extended conversations to tease out concepts from the assigned reading. Blaine comes to class not only having done the reading but also, far more impressively, ready to discuss his interpretation of the reading. He has a small hitch in his speaking style that emerges from his desire to express himself carefully and in the clearest of possible terms. I often imagine the wheels turning in his head as he is speaking, and I appreciate the caliber of the facts that those wheels are able to marshal and the ideas they are able to generate. Just today in class, Blaine and I walked our way through the opinion from the Court of Appeals for the Federal Circuit in *Athena Diagnostics v. Mayo Collaborative Services*—one of the Federal Circuit's most controversial cases in the last five-or-so years. The case is a complex one to unpack: the denial of the petition for rehearing en banc spans thirty-five pages in the Federal Reporter and has no less than eight separate concurring and dissenting opinions. Yet, despite the difficulty of the task, Blaine demonstrated not only mastery of the case's actual facts and the court's actual legal reasoning, but also a nuanced understanding of both how different versions of the opinion might have employed other lines of legal reasoning and what the implications of those other lines of legal reasoning would have been. Blaine is the kind of law student whom I love to have in my classes because he enriches other law students' classroom experiences.

The Giles Rich moot court competition provided Blaine with an opportunity to spend several months drilling down into a single, unresolved patent law issue related to the enablement doctrine. Over a period of two months, I met with the moot court team twice a week during the early evenings to help the team members develop their arguments. We did this through mock oral arguments: team members would argue their cases, and I would ask critical questions designed to highlight any weaknesses that I saw in their arguments. Blaine may have felt a bit uncomfortable with this exercise at first as it forced him to articulate positions in public even though he had not yet thought them through in full, but he quickly warmed to it. He always invested time in considering the questions that I had asked in the previous practice session, and he regularly showed up at the next practice session ready to kick the tires on a reworked version of his argument. Blaine clearly understands how to take criticism and use it to strengthen his arguments.

In sum, I believe that Blaine offers the complete package that one could want in a clerk. He is a sharp, analytical thinker, he cares deeply about being a good communicator, and he has an affable personality—a combination of skills and attributes that I am sure will take him far. If I can offer any additional information on Blaine's candidacy, please do not hesitate to contact me.

Best,

/s/

Kevin Emerson Collins
Professor of Law

Washington University School of Law
One Brookings Drive, MSC 1120-250-258
St. Louis, MO 63130
(314) 935-6420

Kevin Collins - kecollins@wustl.edu - (314) 935-7857

Kevin Collins - kecollins@wustl.edu - (314) 935-7857

Blaine Bonis

1031 Highlands Plaza Dr. W Apt. #305, St. Louis MO 63110 | b.blaine@wustl.edu | 225-333-6047

WRITING SAMPLE

The attached writing sample is a draft of a memo and order I prepared while externing in the chambers of the Honorable Judge David Noce in the Eastern District of Missouri. Judge Noce has permitted me to use this draft as a writing sample with party's names and case number redacted. In this case, after the death of her son in the city jail, Plaintiff KB sued the City, Mayor TJ, and Jail Commissioner JCA. The defendants filed a joint motion to dismiss under FRCP 12(b)(6).

UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF MISSOURI
EASTERN DIVISION

B,	)	
	)	
Plaintiff,	)	
	)	
v.	)	Cause No. x:xx-xx-xxxxx-xxx
	)	
CITY, *et al*.,	)	
	)	
Defendants.	)	

MEMORANDUM AND ORDER

Before the Court is the joint motion of defendants City, TJ, and JCA to dismiss both counts of plaintiff's amended complaint (Doc. 16) under Federal Rule of Civil Procedure 12(b)(6). (Doc 19.)

For the reasons set forth below, defendants' joint motion to dismiss is granted. The parties have consented to the exercise of plenary authority by the undersigned United States Magistrate Judge under 28 U.S.C. § 636(c).

BACKGROUND

In her amended complaint, plaintiff KB alleges the following. On December 10, 2019, Decedent SEP was arrested and taken into custody at the city jail, operated by the defendant City through its Division of Corrections. Three days later, on December 13, 2019, at approximately 1:30 a.m., SEP was taken to the City University Hospital for severe dehydration. He was returned to the city jail at approximately 9:25 a.m. on December 14, 8 hours after he had been brought to the hospital. That evening, at approximately

6:00 p.m., SEP was found lying on the floor of his cell by city jail employee DT while she was conducting a cell check. DT called a nurse and her supervisors. SEP was pronounced dead when emergency medical services arrived at the scene. Plaintiff does not allege a cause of death.

Defendant TJ is the Mayor of the City and defendant JCA is the City Jail Commissioner. Plaintiff alleges the City, TJ, and JCA acted under the color of state law to deprive SEP of his federal constitutional rights under the Fourth and Eight Amendments, conspired to deprive him of those rights to impede and hinder the due course of justice, and caused his wrongful death. (Doc. 16. at 3.)

Plaintiff brings claims in two counts against the City, TJ, and JCA: the first count for wrongful death under Mo. Rev. Stat. § 537.080, with subject matter jurisdiction granted by 28 U.S.C. § 1367 and the second count for deprivation of federal rights under 42 U.S.C. § 1983 with subject matter jurisdiction granted by 28 U.S.C. §§ 1331 and 1343(a)(3).

DEFENDANTS' MOTION TO DISMISS

Defendants City, TJ, and JCA have moved to dismiss plaintiff's complaint for failure to state a claim upon which relief can be granted under Federal Rule of Civil Procedure 12(b)(6). For a complaint to overcome a Rule 12(b)(6) motion to dismiss it "must include enough facts to state a claim to relief that is plausible on its face," with more than just labels and conclusions. *Bell Atl. Corp. v. Twombly*, 550 U.S. 544, 570 (2007). A sufficient complaint will "allow [] the court to draw the reasonable inference that the defendant is liable for the misconduct alleged," *Ashcroft v. Iqbal*, 556 U.S. 662, 678 (2009), and rise above mere speculation. *Twombly*, 550 U.S. at 555.

In reviewing pleadings under this standard, the Court must accept all the plaintiff's factual allegations as true and draw all inferences in the plaintiff's favor. *Retro Television Network, Inc. v. Liken Communications, LLC*, 696 F.3d 766, 768 (8th Cir. 2012). On the

other hand, the Court is not required to accept the legal conclusions the plaintiff draws from the alleged facts. *Id.* at 768-69. Furthermore, the Court "is not required to divine the litigant's intent and create claims that are not clearly raised … and it need not conjure up unpled allegations to save a complaint." *Gregory v. Dillard's, Inc.*, 565 F.3d 464, 473 (8th Cir. 2009) (en banc).

Count 1 against defendant City

Defendant City, as a political subdivision of the state of Missouri, argues that it has sovereign immunity from plaintiff's wrongful death claims under Missouri law because plaintiff has failed to plead any of the exceptions to sovereign immunity available under Mo Rev. Stat. §§ 537.600-537.610. A federal court looks to the law of the forum state in a wrongful death proceeding. *Andrews v. Neer*, 253. F.3d 1052, 1056 (8th Cir. 2001). The Missouri Supreme Court stated that sovereign immunity is:

> "A judicial doctrine which precludes bringing suit against the government without its consent. Founded on the ancient principle that 'the King can do no wrong,' it bars holding the government or its political subdivisions liable for the torts of its officers or agents unless such immunity is expressly waived by statute or by necessary inference from legislative enactment."

Metro St. Louis Sewer District. v. City of Bellefontaine Neighbors, 476 S.W.3d 913, 921 (Mo. banc 2016) (quoting Black's Law Dictionary at 1396 (6th ed.1990)). "Missouri courts have recognized the common law rule of sovereign immunity since 1821. The rule is that the state, by reason of its sovereign immunity, is immune from suit and cannot be sued in its own courts without its consent [or] a waiver by the state." *Metro*, 476 S.W.3d at 921.

As sovereign immunity is the default rule in the state of Missouri, a plaintiff must plead an explicit exception to it. *Epps v. City of Pine Lawn*, 353 F.3d 588, 593-94 (8th Cir. 2003). These exceptions are codified in Mo. Rev. Stat. §§ 537.600-537.610. To fall

under the exceptions in § 537.610, a plaintiff must "specifically plead facts demonstrating that the claim is within this exception to sovereign immunity." *Epps,* 353 F.3d at 594. Courts must strictly construe any statutory provisions that waive sovereign immunity. *Metro*, 476

S.W.3d at 92. As such, courts "cannot read into the statute an exception to sovereign immunity or imply waivers not explicitly created in the statute." *Id.* at 921.

In her second amended complaint, plaintiff fails to allege any exception to the sovereign immunity doctrine. However, in her memorandum in response to the motion to dismiss plaintiff attempts to raise an argument that the City falls under the exceptions set out in § 537.610.1 because it is self-insured through the Public Facilities Protection Corporation.[1] (Doc. 27 at 3). "Section 537.610 allows an entity protected by sovereign immunity to waive that immunity by either purchasing insurance or by adopting a self-insurance plan for those claims." *Hendrix v. City of St. Louis*, 636 S.W.3d 889, 900 (Mo. Ct. App. 2021). Plaintiff argues that the City is insured or self-insured through the Public Facilities Protection Corporation ("PFPC"). (Doc. 27 at 3).

In addressing a motion to dismiss, "[t]he court may consider the pleadings themselves, materials embraced by the pleadings, exhibits attached to the pleadings, and matters of public record." *Illig v. Union Elec. Co.*, 652 F.3d 971, 976 (8th Cir. 2011). Plaintiff's memo in response to the motion to dismiss does not fall into these categories. To overcome the default rule of sovereign immunity, plaintiff must plead facts in her complaint to establish an exception. Plaintiff has failed to allege an exception to the defense of sovereign immunity in her complaint. Earlier cases, *see* footnote 1 below, indicate that

[1] In *Torres v. City of St. Louis*, the Eighth Circuit Court of Appeals, invoking the ruling of the Missouri Court of Appeals in *Hendrix v. City of St. Louis*, 636 S.W.3d 889, 900-01 (Mo. Ct. App. 2021), concluded that the City of St. Louis is not self-insured through the PFPC for negligent supervision or training claims and thus had not waived sovereign immunity for such claims. 39 F.4th 494, 509-10 (8th Cir. 2022).

the City is not self-insured by the PFPC. The Court will allow plaintiff the opportunity to plead an exception to sovereign immunity.

The Court grants the motion to dismiss Count 1 against defendant City without prejudice.

Count 2 against defendant City

Defendant City argues that plaintiff's 42 U.S.C. § 1983 claim must be dismissed for failure to state a claim under *Monell v. Dept. of Soc. Serv. of City of New York*, 436 U.S. 658, 690 (1978). In addition, the City argues that plaintiff failed to allege facts that establish individual liability for any municipal employee and plausibly indicate but-for causation between defendant City and the death of SP.

Monell provides two routes to hold a municipality liable. The plaintiff may show that his or her constitutional rights were violated by "action pursuant to official municipal policy" or as a result of misconduct by non-policy making employees so pervasive "as to constitute a 'custom or usage' with the force of law." *Monell*, 436 U.S. at 691. To demonstrate a custom requires the claim allege facts that plausibly indicate that (1) plaintiff suffered injury due to a continuing, widespread, persistent pattern of unconstitutional conduct by the governmental entity's employees or officials; (2) that there was deliberate indifference to or tacit authorization of said conduct by policymaking officials after notice of misconduct; and (3) that the moving force behind the constitutional violation was the defendant's custom. *Ware v. Jackson Cty.*, 150 F.3d 873, 880 (8th Cir. 1998).

A persistent pattern of unconstitutional conduct requires more than a single instance or isolated instances of wrongdoing. *Harris v. City of Pagedale*, 821 F.2d 499, 508 (8th Cir. 1987). Here, plaintiff alleges that SEP's death was the result of the actions and policy choices of the City and its officers, TJ and JCA. Plaintiff alleges that TJ and JCA established the policies covering the training, supervision, direction and control of the City jail and the personnel working there. (Doc. 16 at ¶ 9.) She further alleges that the City's employee training practices are inadequate. (Doc. 16 at ¶ 10.) Specifically, plaintiff

alleges the City failed to train employees to "treat inmates suffering from obvious medical conditions noticeable to the ordinary person" as well as failing to train them to "recognize and monitor medical emergencies relating to the inmates in their care, by delay or non-response to both urgent and debilitating conditions." (Doc. 16 at ¶ 19.)

Monell claims based on a failure to train must pass a higher bar than other *Monell* claims. *Connick v. Thompson*, 563 U.S. 51, 61 (2011) ("A municipality's culpability for a deprivation of rights is at its most tenuous where a claim turns on a failure to train.") To clear this bar, the plaintiff must show that employees acted with deliberate indifference. *Id.* "'[D]eliberate indifference' is a stringent standard of fault, requiring proof that a municipal actor disregarded a known or obvious consequence of his action." *Id*. (citing *Bd. of Cnty. Comm'rs of Bryan Cnty. v. Brown*, 520 U.S. 397, 410 (1997)).

In her second amended complaint, Plaintiff fails to allege how these failures to train employees resulted in the constitutional violation of SEP's rights or that any particular employee acted in a manner pursuant to these customs that resulted in his death. Without alleging that a particular actor had knowledge of the conditions that posed an excessive risk to SEP's health and did not act on them, plaintiff cannot show that defendants acted with deliberate indifference. *Dulany v. Caranhan,* 132 F.3d 1234, 1239 (8th Cir. 1997).

Plaintiff alleges that the defendants had notice of misconduct based on deaths of ten inmates at the City jail and of seven inmates at the separate City workhouse facility over the ten years preceding SEP's death amounting to a conscious disregard and a deliberate indifference. Plaintiff fails to allege any specific underlying unconstitutional conduct that led to SEP's death and relate it to with any of the other deaths at the City jail that she alleges put defendants on notice of a persistent pattern to which they were deliberately indifferent. She does not allege any facts such as common circumstances, conditions, unconstitutional conduct, policies, or actors that allow the Court to reasonably infer that the string of deaths constituted a pattern that put officials like TJ and JCA on notice.

With no common information beyond the shared location, a relevant pattern cannot be found. Plaintiff does not plausibly allege that those deaths were the result of the same specifically alleged and described custom and policy that led to SEP's death. Thus, plaintiff's *Monell* claim is legally insufficient.

While plaintiff "need not specifically plead the unconstitutional policy or incorporate the policy's specific language into [her] complaint," plaintiff "must include allegations, references, or language by which one could begin to draw the inference that the conduct of which [she] complains was the result of an unconstitutional policy or custom." *McKay v. City of St. Louis*, 4:15-CV-01315-JAR, 2016 WL 4594142, at *5 (E.D. Mo. Sept. 2, 2016). No such inference can be drawn here as plaintiff fails to allege facts that allow the Court to draw a connection between the deaths. Plaintiff's allegations fail to satisfy the pleading standards set out in *Twombly* and *Iqbal*. A claim is not sufficient if it tenders "naked assertion[s]" devoid of "further factual enhancement." *Iqbal*, 556 U.S. at 678 (quoting *Twombly*, 550 U.S. at 557.)

Similarly, plaintiff's allegations fail to show that a government policy was the moving force behind the death of SEP. Plaintiff fails to allege what government actors were involved and what their specific actions were that led to his death. Without more specific factual allegations on the cause of SEP's death and the actions that government actors took or did not take that hastened that injury, plaintiff's current complaint fails to show that the government was the moving force behind the injury.

Plaintiff argues that she does not need to specifically plead the alleged unconstitutional policy or incorporate its specific language, citing *McKay*. There the court stated, "While a § 1983 plaintiff must include allegations, references, or language by which one could begin to draw the inference that the conduct of which he complains was the result of an unconstitutional policy or custom, [she] need not specifically plead the unconstitutional policy or incorporate the policy's specific language into [her] complaint." *Id*. (citing *Crumpley-Patterson v. Trinity Lutheran Hosp*., 388 F.3d 588, 591 (8th Cir. 2004)).

Plaintiffs may proceed to discovery to search for the existence of the required custom or policy if they "allege facts which would support the existence of an unconstitutional policy or custom." *Doe v. School District of City of Norfolk*, 340 F.3d 605, 614 (8th Cir. 2003). Plaintiff's current allegations are not sufficient to support the existence of an unconstitutional policy. The claim lacks facts to support a pattern of unconstitutional behavior, to show a deliberate indifference, or to show that a government custom was the moving force behind the injury that occurred.

The Court grants the motion to dismiss Count 2 against defendant City.

Dismissal of Count 2 against defendant City with prejudice

Defendant asks that Count 2 be dismissed with prejudice. (Doc 28. at 5). It is within the Court's discretion to dismiss a pleading for failure to state a claim with or without prejudice. *Orr v. Clements*, 688 F.3d 463, 465 (8th Cir. 2012). Leave to amend a complaint should be freely given to promote justice. Fed. R. Civ. P. 15(a). "We generally prefer to decide claims on their merits instead of on their pleadings." *Wisdom v. First Midwest Bank, of Poplar Bluff*, 167 F.3d 402, 409 (8th Cir. 1999). Nevertheless, dismissal with prejudice may be warranted if an amended pleading would still be futile. *Pet Quarters, Inc. v. Depository Tr. & Clearing Corp.,* 559 F.3d 772, 782 (8th Cir. 2009). A dismissal with prejudice is also appropriate when a plaintiff has shown "persistent pleading failures" despite receiving the opportunity to amend their pleading. *Michaelis v. Neb. State Bar Ass'n*, 717 F.2d 437, 438–39 (8th Cir. 1983); *see also Knowles v. TD Ameritrade Holding Corp.*, 2 F.4th 751, 758 (8th Cir. 2021) (ruling dismissal with prejudice was proper because plaintiff was unable to plead "adequate claims" despite multiple attempts to do so).

This action commenced on March 9, 2022, with two plaintiffs, the current plaintiff KB and SMP, and one defendant, the City. The plaintiffs alleged two claims, one for negligent wrongful death under Missouri state law and one for violation of 42 U.S.C. § 1983. On May 9, 2022, defendant City moved to dismiss SMP for lack of standing to sue. (Doc.

8.) In a supporting memorandum, the City argued SMP lacked standing. The City also argued that the complaint failed to alleged how SEP died, failed to allege how any City employee was involved in SEP's death, and what policy or policies of the City were violated that led to SEP's death. (Doc. 9 at 1.)

Plaintiff's response to this first motion to dismiss and supporting memorandum was to file an amended complaint on May 25, 2022. (Doc. 10). The amended complaint dropped SMP as a plaintiff and added defendant TJ, the current Mayor of the City, and JCA, the current Commissioner of the City Jail. In all other substantive matters, the amended complaint duplicated the allegations of the original complaint. (Doc. 10).

On June 2, 2022, the Rule 16 scheduling conference was held, a case management order was filed, the first motion to dismiss was denied as moot, and plaintiff filed the current amended complaint.

Regardless of whether it remains possible for plaintiff to discover a pattern of unconstitutional acts from the prior inmate deaths in the ten years that preceded SEP's death, that pattern must also be alleged to have resulted in the unconstitutional acts that led to SEP's death. It has been over two years since SEP's death and in multiple complaints plaintiff does not allege the immediate factual cause of his death, a fact necessary to connect any pattern to SEP's death. Granting more time to allege the cause of his death, regardless of whether it resulted from an unconstitutional pattern or policy would be futile. Therefore, the Court dismisses plaintiff's § 1983 claim against the defendant City with prejudice.

Counts 1 and 2 against defendants TJ and JCA

Plaintiff also brings claims against defendant TJ and defendant JCA along with her claims against the City. Plaintiff does not state the capacity in which she is suing defen-

dants TJ and JCA.[2] "If a plaintiff's complaint is silent about the capacity in which she is suing the defendant, we interpret the complaint as including only official-capacity claims." *Egerdahl v. Hibbing Community College*, 72 F.3d 615, 619 (8th Cir. 2007). A suit against a government officer, like defendants TJ and JCA, in their official capacity "is functionally equivalent to a suit against the employing governmental entity." *Veatch v. Bartels Lutheran Home*, 627 F.3d 1254, 1257 (8th Cir. 2010). "It is proper for a court to dismiss a claim against a government officer in [her] official capacity as duplicative or redundant if the claims are also asserted against the officer's governmental employer." *Caruso v. City of St. Louis*, 4:16 CV 1335 RWS, 2016 WL 6563472, at *1 (E.D. Mo. Nov. 4, 2016). As there is no difference between the claims asserted against the City and its officers TJ and JCA, claims against defendants TJ and JCA are redundant and duplicative.

The Court grants the motion to dismiss Counts 1 and 2 against defendants TJ and JCA with prejudice.

CONCLUSION

For the reasons set forth above,

IT IS HEREBY ORDERED that the defendants' motion to dismiss the complaint (Doc. 19) **is granted** as follows: Count 1 against the defendant City is dismissed without prejudice to plaintiff filing an amended complaint within 30 days of this date to allege facts that indicate a specific exception to the sovereign immunity defense; Count 2 is dismissed against the defendant City with prejudice; and Counts 1 and 2 are dismissed with prejudice against defendants TJ and JCA.

---

[2] The Court takes judicial notice of the fact that neither Mayor TJ or Commissioner JCA were acting in their current positions at the time of SEP's death. LK was the Mayor of City and DG was the Commissioner of Corrections at the time of SEP's death.

Applicant Details

First Name	**Carter**
Last Name	**Brace**
Citizenship Status	**U. S. Citizen**
Email Address	**cbrace@umich.edu**
Address	**Address** Street **615 S Main St Apt 231D** City **Ann Arbor** State/Territory **Michigan** Zip **48104** Country **United States**
Contact Phone Number	**6032771290**

Applicant Education

BA/BS From	**Dartmouth College**
Date of BA/BS	**June 2019**
JD/LLB From	**The University of Michigan Law School** **http://www.law.umich.edu/currentstudents/careerservices**
Date of JD/LLB	**May 6, 2024**
Class Rank	**School does not rank**
Law Review/Journal	**Yes**
Journal(s)	**Michigan Law Review**
Moot Court Experience	**No**

Bar Admission

Prior Judicial Experience

Judicial Internships/ Externships	**No**

Post-graduate Judicial Law Clerk	**No**

Specialized Work Experience

Recommenders

Capra, Brian
bcapra@publiccounsel.org
3109030563
Adams, Michelle
michadam@umich.edu
734-647-3589
Herzog, Don
dherzog@umich.edu
734-647-4047

This applicant has certified that all data entered in this profile and any application documents are true and correct.

Carter Brace

615 S Main Street, Ann Arbor, MI 48104
(603) 277-1290 • cbrace@umich.edu

June 12th, 2023

The Honorable Juan R. Sanchez
U.S. District Court for the Eastern District of Pennsylvania
James A. Byrne U.S. Courthouse
601 Market Street, Room 14613
Philadelphia, PA 19106-1729

Dear Chief Judge Sanchez,

I am a rising third-year student at the University of Michigan Law School and the editor-in-chief of the *Michigan Law Review*. I am writing to apply for a clerkship in your chambers for the 2024-2025 term.

To me, there is no higher calling than public service. My career as a public servant started as a public elementary school teacher with Teach for America. I have continued that mission with legal internships at public interest organizations like the ACLU and Public Counsel's Children's Rights Project. A clerkship would further my commitment to public service and prepare me for a career as a litigator who fights for justice and the less fortunate.

In return, I would offer the court the skills and temperament I am developing as editor-in-chief of the *Michigan Law Review*. Like a law clerk, I need to be able to engage with a wide range of ideas across disparate areas of law, edit written work to the highest standard, and commit myself completely to my work. When a piece of urgent business comes up as editor-in-chief, I resolve it promptly and professionally, no matter what day or hour it is.

Apart from my work on the *Michigan Law Review*, I have worked to improve my own writing during law school. I am the first student in my law school class to have a Note selected for publication in the *Michigan Law Review*. I also received honors in my legal practice class for my memos and briefs.

I have attached my resume, writing sample, and law school transcript. Letters of recommendation from two professors and a senior staff attorney at Public Counsel are also attached:

- Professor Michelle Adams, (734) 647-3589, michadam@umich.edu
- Professor Don Herzog, (734) 647-4047, dherzog@umich.edu
- Brian Capra, (310) 903-0563, bcapra@publiccounsel.org

Thank you for your consideration of my application. I look forward to hearing from you.

Sincerely,

Carter Brace

Carter Brace

615 S Main Street, Ann Arbor, MI 48104
(603) 277-1290 • cbrace@umich.edu

EDUCATION

UNIVERSITY OF MICHIGAN LAW SCHOOL — Ann Arbor, MI
Juris Doctor — Expected May 2024
Journal: *Michigan Law Review*, Editor-in-Chief
Honors: TFA Dean's Scholarship; Student-Funded Fellowship
Note: *Revisiting the "Tradition of Local Control" in Public Education*, 122 MICH. L. REV. ___ (Forthcoming, 2023)
Activities: Organization of Public Interest Students
American Constitution Society
First-Year Information Program, Section Leader
Education Law and Policy Society
SFF Auction

DARTMOUTH COLLEGE — Hanover, NH
Bachelor of Arts in Government, History, *magna cum laude* — June 2019
Honors: Honors in Government
Colby Prize (for commitment to public service)
Class Historian
` James O. Freedman Presidential Scholar (research award)
Thesis: *The Wage-Centric Life and Its Discontents*, Government Department
Activities: Phrygian Senior Society, President
Casual Thursday (improv comedy), President
The Dartmouth, Editor

EXPERIENCE

ACLU OF GEORGIA — Atlanta, GA
Legal Intern — June 2023 – August 2023

PUBLIC COUNSEL — Los Angeles, CA
Law Clerk, Children with Developmental Disabilities Project — May 2022 – July 2022
- Helped draft bills for fair hearings and data transparency in California's state system serving people with developmental disabilities
- Wrote a memo on illegal restrictions to Medicaid-funded healthcare for children with disabilities
- Interviewed clients and prepared court forms in an adoption case

TEACH FOR AMERICA — Tulsa, OK
Corps Member — June 2019 – June 2021
- Taught ELA, math, science, and social studies (in-person and virtual) to 3rd- and 4th-graders at Celia Clinton Elementary, serving diverse group of 71 low-income students
- Published essay in the *Los Angeles Review of Books* on history education and the Tulsa Race Massacre

BREDESEN FOR SENATE — Chattanooga, TN
Campaign Fellow — June 2018 – July 2018
- Recruited volunteers, canvassed for candidate, and talked to hundreds of voters about political priorities

DARTMOUTH COLLEGE DEPARTMENT OF GOVERNMENT — Hanover, NH
Research Assistant — June 2017 – June 2018
- Investigated explanations for trends in public risk perception and created relevant literature reviews
- Derived government spending estimates from close analysis of federal budgets and non-governmental studies

ADDITIONAL

Interests: Indie Electronic Music, Modern Architecture, Essay Collections, Geography Fun Facts

Control No: E196818201 Issue Date: 06/02/2023 Page 1

The University of Michigan Law School

Cumulative Grade Report and Academic Record

Name: Brace,Carter Edward
Student#: 68215582

University Registrar

Subject	Course Number	Section Number	Course Title	Instructor	Load Hours	Graded Hours	Credit Towards Program	Grade
Fall 2021	**(August 30, 2021 To December 17, 2021)**							
LAW	510	003	Civil Procedure	Nicholas Bagley	4.00	4.00	4.00	B+
LAW	530	002	Criminal Law	Barbara Mcquade	4.00	4.00	4.00	B
LAW	580	004	Torts	Scott Hershovitz	4.00	4.00	4.00	B+
LAW	593	012	Legal Practice Skills I	Nancy Vettorello	2.00		2.00	H
LAW	598	012	Legal Pract:Writing & Analysis	Nancy Vettorello	1.00		1.00	H
Term Total				**GPA: 3.200**	**15.00**	**12.00**	**15.00**	
Cumulative Total				**GPA: 3.200**		**12.00**	**15.00**	
Winter 2022	**(January 12, 2022 To May 05, 2022)**							
LAW	520	003	Contracts	Kristina Daugirdas	4.00	4.00	4.00	A-
LAW	540	003	Introduction to Constitutional Law	Don Herzog	4.00	4.00	4.00	A-
LAW	594	012	Legal Practice Skills II	Nancy Vettorello	2.00		2.00	H
LAW	737	001	Higher Education Law	Jack Bernard	4.00	4.00	4.00	A-
Term Total				**GPA: 3.700**	**14.00**	**12.00**	**14.00**	
Cumulative Total				**GPA: 3.450**		**24.00**	**29.00**	
Fall 2022	**(August 29, 2022 To December 16, 2022)**							
LAW	664	002	European Union Law	Daniel Halberstam	3.00	3.00	3.00	A
LAW	681	001	First Amendment	Don Herzog	4.00	4.00	4.00	A-
LAW	747	001	Taxation of Individual Income	Reuven Avi-Yonah	4.00	4.00	4.00	B+
LAW	900	491	Research	Michelle Adams	2.00	2.00	2.00	A
Term Total				**GPA: 3.692**	**13.00**	**13.00**	**13.00**	
Cumulative Total				**GPA: 3.535**		**37.00**	**42.00**	

Continued next page >

Control No: E196818201 Issue Date: 06/02/2023 Page 2

The University of Michigan Law School

Cumulative Grade Report and Academic Record

Name: Brace,Carter Edward
Student#: 68215582

University Registrar

Subject	Course Number	Section Number	Course Title	Instructor	Load Hours	Graded Hours	Credit Towards Program	Grade
Winter 2023	**(January 11, 2023 To May 04, 2023)**							
LAW	492	001	Employment Law Skills & Pract	Margaret Hannon	2.00	2.00	2.00	A-
LAW	569	001	Legislation and Regulation	Daniel Deacon	4.00	4.00	4.00	A-
LAW	669	001	Evidence	Sherman Clark	3.00	3.00	3.00	B+
LAW	716	001	Complex Litigation	Michael Leffel	4.00	4.00	4.00	A-
Term Total				**GPA: 3.607**	**13.00**	**13.00**	**13.00**	
Cumulative Total				**GPA: 3.554**		**50.00**	**55.00**	
Fall 2023	**(August 28, 2023 To December 15, 2023)**							
Elections as of:	06/02/2023							
LAW	453	001	Law and Philosophy Workshop	Ekow Yankah Sarah Moss	2.00			
LAW	560	001	Property	Nicolas Cornell	4.00			
LAW	641	001	Crim Just: Invest&Police Prac	Ekow Yankah	4.00			
LAW	790	001	Early Amer Legal History	William Novak	3.00			

End of Transcript
Total Number of Pages 2

This transcript is printed on special security paper with a blue background and the seal of the University of Michigan. A raised seal is not required.

A BLACK AND WHITE TRANSCRIPT IS NOT AN ORIGINAL

University of Michigan Law School Grading System

Honor Points or Definitions

Through Winter Term 1993		Beginning Summer Term 1993	
A+	4.5	A+	4.3
A	4.0	A	4.0
B+	3.5	A-	3.7
B	3.0	B+	3.3
C+	2.5	B	3.0
C	2.0	B-	2.7
D+	1.5	C+	2.3
D	1.0	C	2.0
E	0	C-	1.7
		D+	1.3
		D	1.0
		E	0

Other Grades:

F Fail.

H Top 15% of students in the Legal Practice courses for students who matriculated from Spring/Summer 1996 through Fall 2003. Top 20% of students in the Legal Practice courses for students who matriculated in Spring/Summer 2004 and thereafter. For students who matriculated from Spring/Summer 2005 through Fall 2015, "H" is not an option for LAW 592 Legal Practice Skills.

I Incomplete.

P Pass when student has elected the limited grade option.*

PS Pass.

S Pass when course is required to be graded on a limited grade basis or, beginning Summer 1993, when a student chooses to take a non-law course on a limited grade basis.* For SJD students who matriculated in Fall 2016 and thereafter, "S" represents satisfactory progress in the SJD program. (Grades not assigned for LAW 970 SJD Research prior to Fall 2016.)

T Mandatory pass when student is transferring to U of M Law School.

W Withdrew from course.

Y Final grade has not been assigned.

* A student who earns a grade equivalent to C or better is given a P or S, except that in clinical courses beginning in the Fall Term 1993 a student must earn a grade equivalent to a C+ or better to be given the S.

MACL Program: HP (High Pass), PS (Pass), LP (Low Pass), F (Fail)

Non-Law Courses: Grades for these courses are not factored into the grade point average of law students. Most programs have customary grades such as A, A-, B+, etc. The School of Business Administration, however, uses the following guides: EX (Excellent), GD (Good), PS (Pass), LP (Low Pass) and F (Fail).

Third Party Recipients

As a third party recipient of this transcript, you, your agents or employees are obligated by the Family Rights and Privacy Act of 1974 not to release this information to any other third party without the written consent of the student named on this Cumulative Grade Report and Academic Record.

Official Copies

An official copy of a student's University of Michigan Law School Cumulative Grade Report and Academic Record is printed on a special security paper with a blue background and the seal of the University of Michigan. A raised seal is not required. A black and white is not an original. Any alteration or modification of this record or any copy thereof may constitute a felony and/or lead to student disciplinary sanctions.

The work reported on the reverse side of this transcript reflects work undertaken for credit as a University of Michigan law student. If the student attended other schools or colleges at the University of Michigan, a separate transcript may be requested from the University of Michigan, Office of the Registrar, Ann Arbor, Michigan 48109-1382.

Any questions concerning this transcript should be addressed to:

Office of Student Records
University of Michigan Law School
625 South State Street
Ann Arbor, Michigan 48109-1215
(734) 763-6499

THE PUBLIC INTEREST LAW OFFICE OF THE LOS ANGELES COUNTY AND BEVERLY HILLS BAR ASSOCIATIONS
The Southern California Affiliate of The Lawyers' Committee for Civil Rights Under Law

April 6, 2023

RE: Letter of Recommendation for Carter Brace

Dear Judge:

It is with great pleasure that I provide this letter in support of Carter Brace's application for a clerkship. I am a Senior Staff Attorney in the Children's Rights Project at Public Counsel in Los Angeles, California. I directly supervised Carter during his summer internship with us in 2022 and can speak firsthand to his qualifications.

Public Counsel is the United States' largest pro bono law firm with the power of more than 5,000 attorneys, law students and other professionals working for people in need. Public Counsel's Children's Rights Project serves thousands of the most vulnerable children in Los Angeles and in the state with one-on-one legal help, policy, legislation, and impact litigation.

Carter demonstrated excellence throughout his internship with Public Counsel. Carter worked closely with me primarily in helping to secure appropriate benefits and services for children with developmental disabilities through California's regional center system. Regional centers are private, non-profit agencies that contract with the California's Department of Developmental Services to provide supports and services to persons with developmental disabilities such as intellectual disability, autism, cerebral palsy and epilepsy. I was very impressed with Carter's ability to learn quickly many of the complex issues involved in these cases, as these children are served by multiple agencies, each with its own set of rules and scope services offered.

Carter skillfully drafted a complex legal memorandum on the barriers that certain regional center children face in attempting to access Medicaid-funded behavioral health treatment services through regional centers due to antiquated state law and restrictive policies imposed by the regional centers. Carter dauntingly reviewed each of the state's twenty-one regional centers' websites to see if their policies were in compliance with current law. Carter applied his findings to the relevant case law in reaching the conclusion that the state is in violation of the law. I intend to use Carter's research to press for statutory amendments on this issue.

Carter accompanied me at multiple legislative and policy meetings to discuss ways to enhance the delivery of services and benefits for children and youth with developmental disabilities. Our debriefings afterwards always reflected Carter's keen awareness of the complexities of the issues, barriers and potential solutions in remediating the problems identified.

Carter quickly became oriented with the regional center services funding disparity issues that I have been working on for many years. He asked very insightful questions reflecting that he understood the nuances. Carter was largely responsible for creating a power point presentation to showcase the key findings of my recent report on inequities in services funding through the regional center system. Carter's knack for storytelling and his exceptional ability to transform complicated data into relatable visual concepts greatly enhanced the quality of the material. This presentation was a product deliverable under a grant provided by the Lucile Packard Foundation for Children with Special Health Care Needs and the grant director was very pleased with the end result. I am extremely grateful to Carter for his invaluable assistance.

Carter also meticulously drafted the court filing paperwork for an adoption case that I finalized late last year. Carter and I discussed key factual information needed to successfully secure retroactive foster care and adoption assistance benefits that we believed were owed by the county to the family. Based on Carter's initial analysis, I ultimately contacted the county to request a re-evaluation of the child's benefits and succeeded in obtaining over $11,000 in retroactive benefits for this family. I am very appreciative of the hard work that Carter provided on this case.

I am amazed and very proud of what Carter was able to accomplish in just a short time working with me at Public Counsel. He is extremely bright, perceptive, efficient and hardworking. Having worked closely with Carter, I know he has much to offer to the legal community. I therefore recommend Carter for the clerkship without any reservations.

If I can be of further assistance, please do not hesitate to contact me at (213) 385-2977, ext. 249, or by email at bacpra@publiccounsel.org.

Sincerely,

Brian Capra
Senior Staff Attorney
Public Counsel

UNIVERSITY OF MICHIGAN LAW SCHOOL
625 South State Street
Ann Arbor, Michigan 48109

June 03, 2023

The Honorable Juan Sanchez
James A. Byrne United States Courthouse
601 Market Street, Room 14613
Philadelphia, PA 19106-1729

Dear Judge Sanchez:

It is with great pleasure that I write to recommend Carter Brace for a position as a law clerk in your chambers. I am well-acquainted with Carter's academic ability, personal character, and maturity. I am confident that he possesses the necessary legal and intellectual skills to excel as a law clerk, and I recommend him highly and without reservation.

As a professor at the University of Michigan Law School, I teach Introduction to Constitutional Law, and Race and the Law. For the past several years, I have been working on a book about Milliken v. Bradley, the school desegregation case decided by the Supreme Court in 1974. Carter had learned about my project from one of my colleagues even before I arrived in Ann Arbor last August. Within just a few weeks after my arrival, he reached out to me to discuss the book. His interest in my project was deep and genuine. In particular, he was interested in the question of local control. That is, whether political subdivisions of states, cities, towns and villages enjoyed any kind of independent sovereignty. This dovetailed with the subject of my book, which largely concerns the question of whether suburban school districts could "opt out" of a metropolitan school desegregation plan.

Carter had already been thinking about writing a law review "note" about the question of local control and city sovereignty, and he proposed that I supervise his work in this regard. I readily agreed. His earnestness, intelligence and forthrightness were already on display. He proposed that we meet every other week over the course of the fall semester to discuss his progress. Carter unfailingly met with me at the appointed time, always brimming with questions, comments and insights to discuss. Over the course of the semester his note took shape, moving from the basic idea stage, through the research process, and culminating in a rough draft that was delivered right on time. I then gave Carter extensive comments, which he incorporated into the final version of his note. Carter's piece makes a nice addition to the literature in this area. It is extensively researched, well-reasoned and well-written.

There are three key takeaways about Carter. First, he is intellectually entrepreneurial. Our entire relationship began because of his particular interest in local control. He reached out to me. He suggested the independent research project. He did the research. And he delivered a superior work product. The entire project emanated from his intellectual curiosity. This curiosity and drive suggests that as a law clerk, he's going to go above and beyond what he's asked to do. Second, he's mature and confident enough to ask pertinent questions. If he runs into any concerns or issues, he'll ask questions before committing a substantial amount of energy running down fruitless areas of inquiry and reaching dead ends. Third, he's going to deliver a superior work product. He's smart, he's careful and he cares about the work. Carter is the Editor-in-Chief of the University of Michigan Law Review for good reason. If you hire him as your law clerk, Carter will do more than you ask of him and he will perform at a very high level.

I hope it is obvious from this letter that I recommend Carter highly. If I can be of further assistance, please do not hesitate to call me at (734) 647-3589. Thank you for your consideration.

Sincerely,

Michelle Adams
Henry M. Butzel Professor of Law

THE UNIVERSITY OF MICHIGAN
LAW SCHOOL
ANN ARBOR, MICHIGAN 48109-1215

DON HERZOG
Edson R. Sunderland Professor of Law

June 10, 2023

The Honorable Juan Sanchez
James A. Byrne United States Courthouse
601 Market Street, Room 14613
Philadelphia, PA 19106-1729

Dear Judge Sanchez:

Carter Brace is a gem, intellectually and personally. I know him well – I taught him introductory constitutional law when he was a fall-term 1L, and first amendment when he was a fall-term 2L. And we've talked a fair amount outside class, both about law and his aspirations. I am utterly confident that he's absolutely the real deal in this business.

The other day, I asked Brace what he has liked most about law school. He already knew his answer: "hard, probing cold calls." No, he is not a fan of social discomfort or watching others squirm; and no, I don't think he's the kind of guy who likes to find out whether he can handle a tight wire. He has his eye on the ball: he thinks he learns the most about law, he sharpens his analytic and reading skills the most, when a professor is asking probing questions to bring into focus what a student is saying and inviting that student to respond to alternatives, to find concrete resources in the case law, and so on. No wonder he is not all that happy with the occasional class where professors lecture a lot, no matter how lucidly; nor with freefloating discussions of the policy stakes of some area of law.

He also has his eye on the ball about being editor-in-chief of the law review. It is of course endlessly time-consuming: he estimates he's been spending around 50 hours a week on it, and he's eager to keep on top of his classwork, not just to phone it in or get by acceptably. He's not naïve about the instrumental stakes: he understands that certain professional options are more likely to be available because he'll have this line on his c.v. But that's not why he's doing it. He thought it was a great opportunity to pitch in and help, and he thought grappling with all kinds of legal scholarship would help him raise his game as a fledgling lawyer, and he would gain some managerial experience dealing with talented, committed people who are also too busy. He knows he could fret about what the time commitment is doing to his GPA, but, he says, once he decided that being editor-in-chief was rewarding enough to take on, he decided there was nothing really to fret about.

Similarly he knows that he could be instrumentally minded about a judicial clerkship, seeing it as a stepping stone to the next valuable opportunity. But he's just not approaching the prospect that way. He loves the idea of wrestling with hard legal problems and trying to get the right answer. He loves the idea of being helpful, and – I know this first-hand from class, but it turns out he also says it of himself – he's splendidly undefensive about criticism. "I have a lot to learn," he says. Well, I guess, if only because he's young. But he's wicked smart, deeply thoughtful, and a very hard worker without being the least bit neurotic or driven.

He thinks he would like to do public interest law, and he thinks he would then like to be a law professor. (His law review note, accepted but not yet published, on how the Supreme Court has thought about local control as a constitutional principle, is utterly well crafted and well written, attentive to nuances in the case law and to more abstract concerns, and better yet weaving those two together.) But he won't approach his clerkship strategically, as a chance to help him realize those future goals. He will want to excel as a clerk. And he will do just that.

Best,

Don Herzog

Don Herzog - dherzog@umich.edu - 734-647-4047

Carter Brace

615 S Main Street, Ann Arbor, MI 48104
(603) 277-1290 • cbrace@umich.edu

WRITING SAMPLE #1

The following writing sample is a memo I researched and wrote for my summer clerkship at the Children with Developmental Disabilities Project at Public Counsel in July 2022 in anticipation of potential future litigation. The sample is my own work and has not been edited by anyone else. The memo details how California state law and the policies of "regional centers" likely violate the Medicaid Act by requiring parental participation as a prerequisite to children receiving certain health treatments. I have omitted an appendix that is cited in the memo that describes each regional center's policy on parental participation.

Carter Brace – Writing Sample #1

Memorandum

TO: Brian Capra
FROM: Carter Brace
RE: Fee-for-service Medi-Cal Issue
DATE: July 28th, 2022

Summary

You asked me to determine if state law and regional center policies violate the Medicaid Act by requiring parental participation in order for children enrolled in fee-for-service Medi-Cal to receive behavioral health treatments. Here, parental participation requirements violate the Medicaid Act in two ways. First, the requirements violate the Act's provision that Medicaid beneficiaries receive "medically necessary" healthcare. Second, the requirements violate the Act's provision that Medicaid beneficiaries with comparable needs receive comparable services.

Facts

California provides services to residents with developmental disabilities through twenty-one non-profit agencies known as regional centers. Cal. Welf. & Inst. Code § 4620. Up until 2012, regional centers were the only potential providers of behavioral health treatments to children with developmental disabilities in California, as those services were not covered by private health insurance or Medicaid. 2011 Cal. Stat. 650. Parent participation requirements for behavioral health treatments were enacted in 2009 in the middle of the Great Recession along with a suite of other measures designed to save costs by limiting government spending on regional center services. Cal. Gov't Code 95021(b)(2); Cal. Welf. & Inst. Code 4686.2(b)(2). Even the regional centers themselves conceded, in testimony to a California Senate committee, that these requirements were significant barriers to regional center consumers. *Ensuring Fair & Equal Access to Regional Center Services for Autism Spectrum Disorders*, 2012 Leg., (Cal. 2012) (statement of George Stevens).

Carter Brace – Writing Sample #1

California participates in Medicaid through its Medi-Cal program. Cal. Welf. & Inst. Code § 14100.1-2. Medi-Cal services are delivered through either managed care plans or a fee-for-service model. As federal guidance and state law changed to include behavioral health treatments as a covered benefit under Medicaid's "early and periodic screening, diagnostic, and treatment" (EPSDT) provisions for children under the age of twenty-one, the state of California continued to shift EPSDT beneficiaries to managed care plans and away from fee-for-service delivery methods. First, federal guidance in 2014 clarified that state EPSDT plans for children with developmental disabilities could include behavioral health treatments. Ctrs. for Medicare & Medicaid Servs., CMCS Info. Bull., Clarification of Medicaid Coverage of Services to Children with Autism 1 (2014). In response, California's Department of Health Care Services (DHCS) made managed care plans responsible for providing behavioral health treatments to EPSDT beneficiaries. Dep't of Health Care Servs., All Plan Letter No. 15-025, Responsibilities for Behavioral Health Treatment Coverage for Children Diagnosed with Autism Spectrum Disorder 3 (2015). Second, in 2018, federal guidance and state law clarified that behavioral health treatments are covered EPSDT services. Cal. Welf. & Inst. Code § 14132.56. In turn, DHCS issued guidance that same year elaborating on the scope of managed care plans' responsibility for behavioral health treatments. Dep't of Health Care Servs., All Plan Letter No. 18-006, Responsibilities for Behavioral Health Treatment Coverage for Members Under the Age of 21 3 (2018).

Nonetheless, many regional center policies predate the shift to covering behavioral health treatments under EPSDT. For instance, two regional centers still use behavioral health policies clearly dated from 2010. See Appendix I.A.9, 11. Moreover, other regional centers may also use

similarly outdated policies, though there is no consistent way to determine when a center's publicly listed policy was first drafted unless the center volunteers that information.

Fee-for-service beneficiaries receive behavioral health treatments through the regional centers. Dep't of Health Care Servs., Behavioral Health Treatment: Frequently Asked Questions for Fee-for-Service Beneficiaries 1 (2018). Seventeen percent of California Medi-Cal beneficiaries receive most of their care through a fee-for-service model. Kimberly Lewis & Cathren Cohen, Foster Care Model of Care Workgroup 3 (2020). The numbers are even higher for certain categories of children. For instance, forty-five percent of foster youth receive their care through fee-for-service Medi-Cal. Id.

Discussion

The requirement imposed by most regional centers that parents participate in a child's behavioral health treatment likely violates the Medicaid Act. If a state chooses to participate in Medicaid, it must comply with the Medicaid Act and its regulations. Harris v. McRae, 448 U.S. 297, 301 (1980). States participating in Medicaid must designate a single state agency to administer and supervise their program and ensure compliance with the law. 42 U.S.C. § 1396a(a)(5). DHCS is the designated single state agency for California. Cal. Welf. & Inst. Code § 10740.

States participating in Medicaid are required to provide EPSDT services to eligible children under the age of twenty-one. 42 U.S.C. § 1396d(a)(4)(B). Under California state law, EPSDT services include behavioral health treatments. Cal. Welf. & Inst. Code § 14132.56. A single state agency must make available a variety of qualified providers willing to provide EPSDT services. 42 C.F.R. § 441.61(b).

Carter Brace – Writing Sample #1

In general, participating states cannot deny coverage of "medically necessary" services covered by their Medicaid plans. Alvarez v. Betlach, 572 F. App'x 519, 521 (9th Cir. 2014). DHCS states that behavioral health treatment needs to be provided to those children who meet medical necessity criteria. Cal. State Plan § 3.1-B(Limitations)(13)(c) (2018). In addition, the Medicaid Act requires that individuals with comparable needs receive comparable services. 42 U.S.C. § 1396a(a)(10)(B); V.L. v. Wagner, 669 F. Supp. 2d 1106, 1115 (N.D. Cal. 2009). Although the regional centers provide treatment for Medi-Cal beneficiaries, the State of California holds ultimate responsibility for ensuring treatment even when it delegates that responsibility. Katie A., ex rel. Ludin v. Los Angeles Cnty., 481 F.3d 1150, 1159 (9th Cir. 2007).

According to DHCS guidance, a child receiving fee-for-service Medi-Cal cannot be denied behavioral health treatment for lack of parent participation in the treatment. Dep't of Health Care Servs., Behavioral Health Treatment: Frequently Asked Questions for Fee-for-Service Beneficiaries, at 1. However, at least sixteen of twenty-one regional centers, covering at least sixty-seven percent of California's population, require that the parents of a child receiving ESPDT services participate in their child's behavioral health treatment, often through an orientation or training program. See Appendix I.A-B. Moreover, state law maintains that providers can only purchase certain kinds of behavioral health treatment when parents participate in a treatment plan, due to "the critical nature of parent participation." Cal. Gov't Code 95021(b)(2); Cal. Welf. & Inst. Code 4686.2(b)(2).

The parental participation requirements in state law and in the policies of most regional centers violate the Medicaid Act in two ways. First, the requirements violate Medicaid's medical necessity provision. Second, the requirements violate Medicaid's comparability provision

because they deny treatment to children with the same need as other children only on account of the ability of their parents to participate in their care.

I. Medicaid Act's Medical Necessity Requirement

The parental participation requirements violate the Medicaid Act's requirement that beneficiaries receive services that are medically necessary. Case law addressing the validity of barriers to Medicaid services that are not outright bans or reductions is limited. As a result, it is necessary to look to federal case law outside of the Ninth Circuit to see whether parental participation requirements function as a denial of medically necessary healthcare.

It is likely that fee-for-service EPSDT beneficiaries are not receiving medically necessary healthcare because the barriers imposed by state law and regional center policy make it practically impossible for many beneficiaries to receive behavioral health treatment. Chisholm v. Hood, 133 F. Supp. 2d 894, 901 (E.D. La. 2001); John B. v. Menke, 176 F. Supp. 2d 786, 805 (M.D. Tenn. 2001). Moreover, case law suggests that a barrier to medically necessary services is not justifiable just because it is created for the alleged benefit of the EPSDT beneficiary. Alberto N. v. Hawkins, No. 6:99-CV-459, 2007 WL 8429756, at *9 (E.D. Tex. June 8, 2007).

In Chisholm, the court found that Louisiana's single state agency failed to provide medically necessary psychological services even though those services were theoretically available under the state's Medicaid program. Chisholm, 133 F. Supp. at 901. The court found that psychologists could only participate in the state program if they enrolled through an intermediate provider, even though most psychologists worked independently of intermediate providers, with the result that most class members could not access services. Id.

In John B., the court found that Tennessee's managed care system violated the EPSDT provisions of the Medicaid Act in part because that system did not allow individuals to receive adequate treatment through a variety of providers in the system. John B., 176 F. Supp. 2d at 805. The court cited the insufficient number of providers participating in the system, coordination problems where different providers could not agree on who was responsible for providing care, and deficient outreach to beneficiaries by state contractors as reasons why the treatment options were inadequate. Id. at 797, 799, 802.

In Alberto N., the court found that Texas violated the Medicaid Act by requiring parents to provide nursing services to their children in cases where the parents were trained to do so. Alberto N., 2007 WL 8429756, at *13. Texas claimed, citing state regulations, that parent training and education were fundamental to optimizing care for children with special needs. Id. at *9. Nonetheless, the court found that whether a parent is able to provide nursing services as opposed to a professional is a non-medical criterion that cannot be used to deny medically necessary services to EPSDT beneficiaries. Id. at *13.

Here, the parental participations requirements for medically necessary behavioral health treatments violate the Medicaid Act because they function as a denial of those services by making behavioral health treatment practically impossible to access. Moreover, it is unlikely that such a functional denial of service can be justified on the grounds that the restriction is in the best interest of the patient.

First, it is practically impossible for much of the fee-for-service population to receive behavioral health treatment. Most regional centers, covering a large majority of California's population, require that parents participate in behavioral health treatment. See Appendix I.A-B. However, fee-for-service beneficiaries accessing EPSDT services are disproportionately likely to

be in foster care and are often not in contact with their parents. Lewis & Cohen, at 3. Even if regional centers allow a foster caregiver to fulfill the parental requirement, the nature of foster care makes it close to impossible to satisfy such requirements. Foster youths experience frequent placement changes, with most foster youth who spend two or more years in care moving three or more times. Foster Care Facts, Children's Law Center of California, https://www.clccal.org/resources/foster-care-facts/. Moreover, foster youth can be moved on as little as two weeks' notice. Cal. Welf. & Inst. Code § 16010.7(e). In addition, the parental participation required can be substantial, in some cases including a sixteen-hour class or multiple group training sessions that may not fit an individual family's schedule. See Appendix I.A.2-3, 8, B.1. This situation is analogous to Chisholm, where the court found certain Medicaid services were unavailable in practice even as they were accessible in theory. Chisholm, 133 F. Supp. at 901. In that case, the court found that the services were unavailable because a majority of class members could not access them. Id. Here, it is plausible to think that a potential class of plaintiffs who are fee-for-service beneficiaries and cannot meet the parental requirement, perhaps because they are foster youths or because their parents work during regularly scheduled trainings, could state a similar claim that treatments are largely inaccessible.

Moreover, the state of California cannot avoid responsibility for violating the Medicaid Act by claiming that the regional centers, not the state, are the ones denying services in practice. In John B., the court found that the state was responsible for the lack of providers in its Medicaid system even where the specific problems were often caused directly by non-state actors such as contractors and private healthcare providers. John B., 176 F. Supp. 2d at 797, 799, 802. If anything, California's responsibility for the dysfunction in its Medi-Cal system is even greater here, as the language of regional center policies is modelled on the language of state law. See

Appendix I.A.9, C.1. The language of that state law is even repurposed verbatim by at least two regional centers, which says that parental participation is "critical" to behavioral health treatment. Id.

Second, parental participation requirements cannot be justified on the grounds they are themselves medically necessary. As in Alberto N., the present issue with fee-for-service Medi-Cal involves a requirement that parents be involved in some form in their child's care, ostensibly for the best interest of the child. Alberto N., 2007 WL 8429756, at *9. However, under Alberto N.'s reasoning, the capabilities of a parent are not relevant to determining whether a child needs medical services, even if laws, regulations, or regional policies emphasize the importance of parental participation. Id. at *13. Therefore, placing a barrier like a parental participation requirement in front of fee-for-service beneficiaries is a denial of medically necessary services.

II. Medicaid Act's Comparability Requirement

In the alternative, the parental participation requirements in state law and the policies of most regional centers violate the Medicaid Act's comparability requirement. For EPSDT care to be comparable, it needs to be provided equally to beneficiaries with the same categorical need. Oster v. Lightbourne, No. C 09-4668 CW, 2012 WL 691833, at *13-14 (N.D. Cal. Mar. 2, 2012); Detgen ex rel. Detgen v. Janek, 752 F.3d 627, 632 (5th Cir. 2014). In addition, a comparability claim should be evaluated in light of the broader purposes of the Medicaid Act. Parry By & Through Parry v. Crawford, 990 F. Supp. 1250, 1257 (D. Nev. 1998).

In Oster, the court found that it was likely a violation of the Medicaid Act for California to give differing levels of funding for in-home Medi-Cal services to consumers with comparable needs. Oster, No. C 09-4668 CW, 2012 WL 691833, at *14. The court found that the method

California used to differentiate funding violated the Act in two ways. Id. First, the state violated the Act by determining funding based on numerical scores of beneficiaries that measured their ability to perform an array of everyday functions, but which did not measure a beneficiary's need for a particular service. Id. at *13. Second, the state violated the Act by automatically reducing funding for beneficiaries who did not submit a supplemental application but preserving funding for comparable beneficiaries who did submit the application. Id. at *14.

It is also necessary to look outside the Ninth Circuit for relevant case law on the comparability issue. In Detgen, the court held that Texas did not violate the Medicaid Act's comparability requirements by making a "categorical exclusion," or blanket prohibition, on funding ceiling lifts for disabled Medicaid beneficiaries. Detgen, 752 F.3d at 633. The court distinguished a categorical exclusion from another case where a state impermissibly limited the availability of a generally available treatment for non-medical reasons. Id.

In Parry, the court found that the state of Nevada violated the Medicaid Act by limiting certain benefits to those with a diagnosis of a developmental disability when the federal definition of categorically needy for those benefits also included those with conditions related to developmental disabilities but no diagnosis. Parry, 990 F. Supp. at 1257. Parry also stated that judicial interpretations of the Medicaid Act should keep the purpose of the Act in mind, namely providing services to those who need and cannot afford them, while also considering the high costs borne by the state in providing such services. Parry, 990 F. Supp. at 1257.

Here, the parental participation requirements violate the Medicaid Act's comparability requirements because they treat beneficiaries with the same categorical needs differently for non-medical reasons.

First, the parental participation requirements impermissibly differentiate between EPSDT beneficiaries based on the degree to which their parents are willing or able to be involved in their care. Whether a child's parent can attend orientation and training sessions does not affect a child's need for behavioral treatment, much as beneficiaries' scores on general assessments in Oster did not reflect their need for particular services. Oster, No. C 09-4668 CW, 2012 WL 691833, at *13.

Second, the requirements impermissibly differentiate between EPSDT beneficiaries based on their ability to navigate administrative hurdles. The situation again mirrors Oster, because in both instances needy beneficiaries are denied services unless they take the proactive step of navigating some administrative prerequisite to receiving benefits. In Oster, that prerequisite is submission of a supplemental application. For fee-for-service beneficiaries here, the prerequisite is parental participation. Oster, No. C 09-4668 CW, 2012 WL 691833, at *14.

Moreover, the state or the regional centers cannot avoid the issue by merely reclassifying certain FFS beneficiaries so that they are not categorically needy. Parry is clear that federal definitions of need will prevail over selective state-level definitions. Parry, 990 F. Supp. at 1257. The parental participation requirements cannot be interpreted as a categorical exclusion on an entire group of the categorically needy, like those upheld in Detgen, but are instead a denial of service for non-medical reasons that affects just some of those children who need behavioral health treatment. Detgen, 752 F.3d at 633.

Applicant Details

First Name	**Michelle**
Middle Initial	**E**
Last Name	**Briney**
Citizenship Status	**U. S. Citizen**
Email Address	**meb392@cornell.edu**
Address	**Address** **Street** **107 E State Street** **City** **Ithaca** **State/Territory** **New York** **Zip** **14850** **Country** **United States**
Contact Phone Number	**(203)228-8990**

Applicant Education

BA/BS From	**Fordham University**
Date of BA/BS	**May 2018**
JD/LLB From	**Cornell Law School** **http://www.lawschool.cornell.edu**
Date of JD/LLB	**May 11, 2024**
Class Rank	**10%**
Law Review/Journal	**Yes**
Journal(s)	**LII Supreme Court Bulletin**
Moot Court Experience	**Yes**
Moot Court Name(s)	**Rossi**

Bar Admission

Prior Judicial Experience

Judicial Internships/Externships	**No**
Post-graduate Judicial Law Clerk	**No**

Specialized Work Experience

Recommenders

Donovan, Margaret
margaret.donovan@usdoj.gov
2039019660
Blume, John
jb94@cornell.edu
607-255-1030
Fraser, Hilary
htf4@cornell.edu

This applicant has certified that all data entered in this profile and any application documents are true and correct.

107 E. State St., Apt. 413
Ithaca, NY 14850
(203) 228-8990
meb392@cornell.edu

Tuesday, June 20, 2023

The Honorable Juan R. Sànchez
Chief Judge, U.S. District Court for the Eastern District of Pennsylvania
14613 U.S. Courthouse
601 Market Street
Philadelphia, PA 19106
Courtroom 14-B

Dear Chief Judge Sànchez,

I am a rising third-year law student at Cornell Law School, and am writing to apply for a clerkship in your chambers for the 2024-2025 term. My resume, transcript, law school grading policy, and writing sample are included in my application, along with letters of recommendation from Cornell professors John Blume and Hilary Fraser and AUSA Margaret Donovan, my internship supervisor last summer at the U.S. Attorney's Office for the District of Connecticut.

Please contact me at the above phone number or email address if you require additional information. Thank you for your time and consideration!

Sincerely,

Michelle Briney

Enclosures

MICHELLE E. BRINEY

107 E State Street, Apt. 413, Ithaca, NY 14850 • 203-228-8990 • meb392@cornell.edu

EDUCATION

Cornell Law School — Ithaca, NY
Juris Doctor anticipated — May 2024
GPA: 3.840 (Top 10%)
Honors: Frederic H. Weisberg Prize in Constitutional Law; Dean's List (4 semesters);
CALI Awards for Property, Professional Responsibility and Federal Courts
Activities: LII Supreme Court Bulletin, *Managing Editor*
Rossi Moot Court Competition, *Quarterfinalist*; Langfan First-Year Moot Court Competition, *Round of 32*
International Refugee Assistance Project; Public Interest Law Union; Women's Law Coalition

Fordham University — Bronx, NY
Bachelor of Arts in History and Middle East Studies with Minor in Biology, *summa cum laude* — May 2018
GPA: 3.885
Honors: Phi Beta Kappa; Phi Kappa Phi; Phi Alpha Theta (History Honors Society)
Dean's List, First and Second Honors; Class of 1915 Prize (best debate speaker in Senior class)
Activities: Fordham Debate Society, Ranked 8th Novice Speaker at 2016 Stanford Debate Tournament
Study Abroad for Area and Arab Languages in Amman, Jordan

EXPERIENCE

National Archives Office of General Counsel — College Park, MD
Summer Law Clerk — Summer 2023
- Researched FOIA and FTCA claims for attorneys in the Archives' Office of General Counsel

Capital Punishment Clinic, Cornell Law School — Ithaca, NY
Student Attorney — Spring 2023
- Wrote portion of traverse submitted in support of client's federal habeas petition

Afghan Assistance Clinic, Cornell Law School — Ithaca, NY
Student Attorney — Fall 2022
- Assisted client in filing online I-589 Application for Asylum, including holding weekly meetings
- Researched Afghanistan country conditions, client's grounds for asylum, and legal precedent
- Wrote legal memo in support of client's application for asylum

U.S Attorney's Office, District of Connecticut — New Haven, CT
Summer Legal Intern — May 2022–August 2022
- Researched and wrote memoranda on civil and criminal issues for Assistant U.S. Attorneys (AUSAs)
- Observed trials, proffer session, sentencing hearings and bond hearings led by AUSAs
- Appeared in court at sentencing hearing

Barnes & Noble — Waterbury, CT
Bookseller — November 2018–August 2021
- Assisted customers and routinely sold highest number of memberships per week
- Taught newer coworkers how to use cash registers and the store's lookup systems
- Reorganized and maintained history section to encourage browsing and increase findability

Connecticut Institute for Refugees and Immigrants — Hartford, CT
Volunteer — August 2018–March 2020
- Helped attorney and staff assist immigrant clients by organizing files and finding country condition information
- Wrote close file letters, cover letters, and responses to clients
- Received a CIRI Volunteer of the Year award for 2018

INTERESTS

Books by Terry Pratchett, Steven Sondheim musicals, Tang Soo Do karate (black belt)

Cornell Law School - Grade Report - 06/03/2023

Michelle E Briney

JD, Class of 2024

Course	Title	Instructor(s)	Credits	Grade	
Fall 2021 (8/24/2021 - 12/3/2021)					
LAW 5001.2	Civil Procedure	Gardner	3.0	A	
LAW 5021.2	Constitutional Law	Rana	4.0	A	CALI
LAW 5041.3	Contracts	Rachlinski	4.0	A-	
LAW 5081.6	Lawyering	Stanley	2.0	B+	
LAW 5151.4	Torts	Schwab	3.0	A	

	Total Attempted	Total Earned	Law Attempted	Law Earned	MPR Attempted	MPR Earned	MPR
Term	16.0	16.0	16.0	16.0	16.0	16.0	3.8337
Cumulative	16.0	16.0	16.0	16.0	16.0	16.0	3.8337

^ Dean's List

Spring 2022 (1/18/2022 - 5/2/2022)					
LAW 5001.3	Civil Procedure	Reinert	3.0	A-	
LAW 5061.3	Criminal Law	Sood	3.0	A	
LAW 5081.6	Lawyering	Stanley	2.0	B+	
LAW 5121.3	Property	Underkuffler	4.0	A	CALI
LAW 6011.1	Administrative Law	Rachlinski	3.0	A-	

	Total Attempted	Total Earned	Law Attempted	Law Earned	MPR Attempted	MPR Earned	MPR
Term	15.0	15.0	15.0	15.0	15.0	15.0	3.7786
Cumulative	31.0	31.0	31.0	31.0	31.0	31.0	3.8070

^ Dean's List

Fall 2022 (8/22/2022 - 12/16/2022)					
LAW 6131.2	Business Organizations	Charles Whitehead	4.0	A-	
LAW 6263.1	Criminal Procedure - Adjudication	Blume	3.0	A	
LAW 6641.1	Professional Responsibility	Wendel	3.0	A+	CALI
LAW 7259.101	Faculty At Home Seminar: Constitutional Law in the News	Johnson	1.0	SX	
LAW 7790.301	Afghanistan Assistance Clinic I	Fraser/Sherman	4.0	A	

	Total Attempted	Total Earned	Law Attempted	Law Earned	MPR Attempted	MPR Earned	MPR
Term	15.0	15.0	15.0	15.0	14.0	14.0	3.9764
Cumulative	46.0	46.0	46.0	46.0	45.0	45.0	3.8597

^ Dean's List

Spring 2023 (1/23/2023 - 5/16/2023)					
LAW 6203.1	First Amendment: Speech and Press Clauses	Tebbe	3.0	B+	
LAW 6401.1	Evidence	K. Weyble	4.0	A	
LAW 6431.1	Federal Courts	Gardner	4.0	A	CALI
LAW 6437.1	Federal Practice and Procedure	Nathan	1.0	SX	
LAW 7811.301	Capital Punishment Clinic 1	Blume/Freedman/Knight	4.0	A-	

	Total Attempted	Total Earned	Law Attempted	Law Earned	MPR Attempted	MPR Earned	MPR
Term	16.0	16.0	16.0	16.0	15.0	15.0	3.7780
Cumulative	62.0	62.0	62.0	62.0	60.0	60.0	3.8393

^ Dean's List

Total Hours Earned: 62

United States Department of Justice

United States Attorney
District of Connecticut

Connecticut Financial Center
157 Church Street, 25th Floor
New Haven, Connecticut 06510

(203) 821-3700
Fax (203) 773-5376
www.justice.gov/usao-ct

February 15, 2023

Re: Letter of Recommendation for Ms. Michelle Briney

Greetings:

I am writing to give my wholehearted recommendation that Ms. Michelle Briney be offered a position with your chambers as a law clerk. For the reasons discussed below, I believe that Michelle would be a valuable addition to your courtroom.

Michelle has already proven herself as a member of the Department of Justice; indeed, I first came to know her through her participation in my Office's own 2022 Summer Internship Program, for which I am the program coordinator. Throughout the DOJ internship, Michelle established herself as someone who my colleagues could rely on for timely, responsive assistance. If she is given another opportunity to contribute to the federal justice system, I have every reason to believe that your chambers will have a similar positive experience.

Michelle displayed solid legal research and writing skills while with the District of Connecticut. Beginning at the very start of the summer, she proved her reliability by providing prompt and thorough assistance on a time-sensitive criminal appellate issue. She also conducted important research in support of a motion to suppress and ran to ground key evidentiary issues for an AUSA who was preparing for trial. It is worth noting that, in addition to her contributions to our Criminal Division, Michelle also volunteered for an assignment with our Civil Division that involved research into a local university's compliance with the Americans with Disabilities Act. Her interest and enthusiasm for all aspects of federal litigation made her a particularly enjoyable intern for AUSAs to work with on assignments. In my unconditional opinion, it also makes her particularly well-qualified to serve as a federal law clerk.

I observed Michelle's work ethic and professional demeanor firsthand when she assisted with one of my own cases. Michelle not only created a first draft of a sentencing memorandum in a drug trafficking case—which I ultimately filed with minimal editing—but she also appeared on the record for the United States at the sentencing hearing itself. She flawlessly presented a key portion of the government's sentencing argument in front of a district court judge. The significance of having a summer intern assist with this type of proceeding is indicative of the level of trust that my colleagues and I could place in Michelle. She was, of course, thoroughly prepared for this serious responsibility.

On a more personal level, Michelle is both likeable and appropriately humble. She quickly bonded with her fellow interns and was a genuine pleasure to interact with, both in the office and during our summer program's social events. In terms of her maturity and professionalism, I had full faith that she could be entrusted with representing the United States on the record, as detailed above. It is exactly these qualities that make me confident she would be an excellent clerk. And of course, as I am sure you can review from her transcripts, her academic achievements are remarkable.

I would be happy to discuss Michelle's qualifications in further detail. Please do not hesitate to contact me through any of the means of communication in my signature block.

Sincerely,

MARGARET M. DONOVAN
ASSISTANT UNITED STATES ATTORNEY
United States Attorney's Office
District of Connecticut
157 Church Street, 25th Floor
New Haven, CT 06510
Office: (203) 821-3819
Cell: (203) 901-9660
margaret.donovan@usdoj.gov

June 12, 2023

The Honorable Juan Sanchez
James A. Byrne United States Courthouse
601 Market Street, Room 14613
Philadelphia, PA 19106-1729

Dear Judge Sanchez:

I am the Samuel F. Leibowitz Professor of Trial Techniques at Cornell Law School and the Director of the Cornell Death Penalty Project. Michelle was a student in my Criminal Procedure class during the fall of 2022 and in the Capital Punishment Clinic during the spring 2023 semester. She also served as my Research Assistant during the spring 2023 semester. Thus I have observed her work in a variety of different contexts and, therefore, I have a good vantage point to comment on her qualifications to be a judicial clerk.

In Criminal Procedure, Michelle was one of the stars of the class. She was very active in the class discussions (in a good way), and displayed, on a number of occasions, the ability to tease apart a complex doctrinal problem. She was a joy to have in class and always moved the class discussion forward. On the final examination, she did an excellent job, and received the third highest grade (out of 90 students) and thus received an A for the course. I worked more closely with Michelle in the Capital Punishment Clinic and when she was my RA. In the clinic, Michelle was assigned to a team tasked with drafting a Traverse in a federal habeas case on behalf of a death row inmate. More specifically, Michelle was assigned to work on a claim alleging ineffective assistance of counsel for failing to develop and present evidence supporting the client's consistent assertion that the homicide was an accident and not murder. Michelle did an excellent job. Habeas corpus can be overwhelming at times for students (and lawyers), as they are required to not only analyze whether the claim was meritorious, but also whether the state court's merits' decision was objectively unreasonable. Again, her ability to analyze a set of complex legal problems and to present her analysis clearly and concisely came through. These qualities and skills will serve Michelle will as a judicial clerk. As my RA, she assisted in updating an Evidence Book that I co-author with several other professors (A Modern Approach to Evidence). She was assigned to review on the Chapters and do an initial analysis of needed updates, etc. As was true in my other experiences with Michelle, she did an excellent job. Her research was through and thoughtful and she completed all her assignments in a timely fashion.

Michelle is also very personable. She was an excellent team member in the clinic and as an RA. She is a bit quirky, but in a good way, as she realizes it and is quick to poke fun at herself in an endearing way. She will definitely get along well her co-clerks and the administrative staff in your chambers.

Michelle has an excellent overall record at Cornell, and is one of our top students. She is in the top 10% of the class, has received a number of CALI awards (including the CALI in Federal Courts, one of the most difficult classes at Cornell Law School) and the Weisberg Prize on Constitutional Law. Her excellence in the classroom is even more impressive when you take into account that she is very involved in extracurricular activities including LII Supreme Court Bulletin, Moot Court, the Women's Law Coalition, the Public Interest Law Union and the Refuge Assistance Project.

Michelle wants to clerk because she believes that not only will she have another year to hone her research and writing skills under a judge's mentorship, but also to get exposure to different areas of law in a practical way. As someone who plans on a career in public service, clerking will provide her with an opportunity to evaluate her career options.

I sum, I give Michelle my highest recommendation. I have no doubt that she has the intelligence, legal research and writing skills, and personality to be an outstanding judicial clerk. Please do not hesitate contact me if I can provide you with any additional information. I can be reached at jb94@cornell.edu, or my cell phone is (803) 240-6701.

Very truly yours,

John H. Blume
Samuel F. Leibowitz Professor of Trial Techniques
and Director of the Cornell Death Penalty Project

June 12, 2023

The Honorable Juan Sanchez
James A. Byrne United States Courthouse
601 Market Street, Room 14613
Philadelphia, PA 19106-1729

Dear Judge Sanchez:

I write to recommend Michelle Briney for a position as a judicial clerk.

Michelle was a second-year law student in my clinical course, Afghanistan Assistance Clinic, LAW 7790 at Cornell Law School, Fall 2022.

This course required students to work with Fulbright scholars recently arrived from Afghanistan to prepare and file affirmative asylum applications with the U.S. Citizenship and Immigration Service ("USCIS"). As clients, the Afghan scholars presented with trauma, grief and fear, and were sometimes overwhelmed to the point of passivity. To represent these clients effectively, students had to quickly learn to elicit with sensitivity stories of horrific mistreatment, plus learn enough of Afghanistan's culture, history, politics, governance and religion to form a coherent context for the client's personal narrative, and learn the basics of asylum law. An additional challenge was deciphering USCIS's filing requirements in the newly implemented online filing portal together with a rapidly evolving patchwork of U.S. immigration benefits programs affecting Afghan nationals.

The work product each student produced described a unique client and included a 10 to 20 page declaration or personal narrative of the client, an annotated document index of 50 or more documents, a legal brief and a 15-page government form. In sum, students faced significant pressure to research and produce a winning case of immeasurable value to their clients at a time of unsettled policies and facts regarding Afghanistan.

In this intense environment, Michelle Briney succeeded with ease. Michelle was an enthusiastic learner, digging into law and fact issues with vigor. She was also tireless in her support and commitment to her client. In this class, I felt that I knew Michelle's client best, because Michelle knew her client best and crafted her fact and law-based argument on her client's behalf so effectively. The declaration Michelle wrote with her client is an exemplary document that has potential to be de-identified and released as a powerful literary piece.

Similarly, Michelle's document index includes approximately 50 articles she found that squarely corroborate her client's claim. The legal memo is well researched and clear. As a person, Michelle is confident and unabashed, while being entirely receptive and social. I have the sense that she does her very best work on each assignment. Immigration cases and clinical courses lend themselves to team work. Michelle got along well with classmates, sharing her research discoveries and being respectful of classmates' perspectives. In class lecture, Michelle regularly contributed analytical comments and questions.

Based on my observations of Michelle Briney in this course, I believe she would be highly effective as a judicial clerk. Her easy management of a heavy caseload and level-headed approach to complex, new material may be valued in a judicial setting.

If I may be of further assistance, please do not hesitate to contact me.

Hilary T. Fraser, Esq.

Adjunct Professor
Afghanistan Assistance Clinic
Cornell Law School

Hilary Fraser - htf4@cornell.edu

MICHELLE E. BRINEY
107 E State Street, Apt. 413, Ithaca, NY 14850 • 203-228-8990 • meb392@cornell.edu

Writing Sample

This writing sample is a memorandum of law I wrote during my Summer 2022 internship with the Connecticut Office of the U.S. Attorney in New Haven, Connecticut. It concerns the application of Rule 16(a)(1)(B)(i) of the Federal Rules of Criminal Procedure.

My internship supervisor at the CT USAO has approved my use of this memo as a writing sample. Some identifying information has been anonymized for confidentiality; I have signaled these changes by placing them in double brackets. Otherwise, my work has not been edited by anyone else.

`QUESTION PRESENTED

Under Federal Rules of Criminal Procedure 16(a)(1)(B)(i), which requires the government to disclose any statements in its possession, custody, or control made by the defendant, if the attorney for the government knows or could have known through due diligence that the statement exists, was the government required to find and disclose an additional recording [[made by a third party, which the government had not known about?]]

BRIEF ANSWER

Probably not. The due diligence requirement of Rule 16(a)(1)(B)(i) only applies to recordings of the defendant that are in governmental custody, possession, or control. Prosecution and defense agree the relevant recording was not in governmental possession, custody, or control. Therefore, the government was not required to use due diligence under Rule 16(a)(1)(B)(i).

ANALYSIS

Rule 16(a)(1)(b)(i) of the Federal Rules of Criminal Procedure probably did not require the prosecution to find the additional recording. The government's Rule 16 and *Brady* obligations apply only to documents in the government's possession, custody, or control. The prosecutor is assumed to have constructive knowledge of all statements in the government's possession, and thus must exercise due diligence to find and disclose information under government control. However, there is no due diligence requirement for parties not under government control or part of the "prosecution team," even if the government should have known the evidence might exist. Thus, there was probably no obligation to find the recording, as both sides agree the recording was not in the government's possession, custody, or control.

The government's Rule 16 and *Brady* obligations only apply to documents within governmental possession, custody, or control. Fed. R. Crim. P. 16; *United States v. Brennerman*, 818 Fed. App'x 25, 29 (2d. Cir. 2020). Under Rule 16(a)(1)(B)(i), the government must disclose to defendants relevant recorded statements if the statements meet two conditions: the government's attorney knows or could know of the statement through due diligence, *and* the statement is within the government's possession, custody or control. Fed. R. Crim. P. 16(a)(1)(B)(i). Similarly, both *Brady* and Rule 16(a)(1)(E) require the government provide the defense with evidence in its possession that is material to the defense's case. Fed R. Crim. P. 16(a)(1)(E); *see also United States v. Chalmers*, 410 F.Supp.2d 278, 287 (S.D.N.Y. 2006). The definition of governmental possession, custody, and control is the same for all Rule 16 requests. *See United States v. Volpe*, 42 F. Supp. 2d 204, 221 (E.D.N.Y. 1999) (comparing Rule 16(a)(1)(A) and 16(a)(1)(C); *United States v. Stein*, 488 F.Supp.2d 350, 360-61 (S.D.N.Y. 2007). There is debate in the Second Circuit over the degree of similarity between Rule 16 and *Brady*; Rule 16's discovery obligations are arguably broader than those of Brady. *See United States v. Meregildo*, 920 F. Supp. 2d 434, 443 (S.D.N.Y. 2013). However, most courts apply the "prosecution team" standard to both Rule 16 and Brady: evidence must only be disclosed if it is within the possession, custody or control of "a government agency so closely aligned with the prosecution…as to be…part of the prosecution team." *United States v. Finnerty*, 411 F.Supp.2d 428, 432 (S.D.N.Y. 2006); *see also Chalmers*, 410 F.Supp.2d at 289 ("[T]he Court is not persuaded that 'government' for purposes of Rule 16 should be any broader than the 'prosecution team' standard…adopted in…*Brady*"). Under both *Brady* and Rule 16, the government has no responsibility to obtain items not under its control. *See Brennerman*, 818 Fed. App'x at 29 ("The government's discovery and disclosure obligations extend only to information and documents in

the government's possession."); *United States v. Tomasetta*, No. 10 Cr. 1205, 2012 WL 896152 at *5 (S.D.N.Y. Mar. 16, 2012) ("Since the [Rule 16] materials…were outside of the government's control, it had no Rule 16 obligation to discover or obtain these materials").

The government is required to use due diligence to obtain recordings and exculpatory evidence in its possession. Fed. R. Crim. P. 16(a)(1)(B)(i); *United States v. Avellino*, 136 F.3d 249, 255 (2d Cir. 1998). The government's discovery obligations only apply to evidence that is known to the prosecutor. *Avellino*, 136 F.3d at 255. However, "an individual prosecutor is presumed…to have knowledge of all information gathered in connection with his office's investigation." *Id.* The due diligence requirement stems from this constructive knowledge—thus prosecutors have "a duty to learn of any favorable evidence known to the others acting on the government's behalf." *Id.* This prevents prosecutors from having their cake and eating it too—the prosecution cannot have easy access to relevant evidence *and* avoid disclosure because the evidence is technically held by another agency. *See United States v. Giffen*, 379 F.Supp.2d 337, 342 (S.D.N.Y. 2004). While the prosecution cannot be "willfully blind" to information it holds, it does not have a duty to learn about information it does not possess and does not have constructive knowledge of. *Meregildo*, 920 F.Supp.2d at 445. "In the Second Circuit, a prosecutor's constructive knowledge only extends to…the prosecution team." *Id.* at 440-41. Thus, Rule 16 does not apply if individuals are not part of or controlled by agencies involved in the case. *See id.*

There is no due diligence requirement for information from third parties that are neither under the control of the government nor part of the prosecution team. *See United States v. Hutcher*, 622 F.2d 1083, 1088 (2d Cir. 1980). In *United States v. Finnerty*, the court considered a Rule 16 request for a New York Stock Exchange (NYSE) internal study. *Finnerty*, 411

F.Supp.2d at 432. This study was in the possession of the NYSE; while the NYSE had previously provided documents to the government, the government had not seen or reviewed this study. *Id.* The court denied the request, ruling that Rule 16 only applied if the NYSE was a government agency involved in a joint investigation. *Id* at 432-33. Because it was neither, the government had no obligation to obtain the study. *Id* at 434.

Similarly, the government is usually not responsible for incomplete information produced by subpoenaed or cooperating witnesses and third parties. *United States v. Weaver*, 992 F.Supp.2d 152, 157 (E.D.N.Y. 2014). Third party information might be under government control when there is a legal agreement allowing the government unqualified access. *See Stein*, 488 F.Supp.2d at 362-64 (granting a Rule 16(a)(1)(E) request because the company that held the information had signed a Deferred Prosecution Agreement). However, in *United States v. Weaver*, defendants requested production of "any and all documents" possessed by cooperating witnesses. 992 F.Supp.2d at 157. The court ruled the government's obligations were satisfied by a broad request for information from each witness, even if the witnesses provided incomplete information. *Id.* It stated that "[t]o the extent that the cooperating witnesses withheld [relevant] documents…from the government in response to its request, the government is not required to produce such documents." *Id.* As long as the government turned over any subsequent information received from witnesses, it had no additional Rule 16 or *Brady* obligations. *Id.* Similarly, the court in *United States v. Tomasetta* said that "documents in the hands of cooperating third parties are not attributable to the government." 2012 WL 896152 at *4. In *Tomasetta*, the government issued several subpoenas, and stated it gave defendants all the information received. *Id.* at *1, *4. While the government knew relevant notebooks by a key witness might exist, the notebooks were not given to the government until the eve of trial. *Id.* at

*2-3. Once the government possessed the notebooks, it promptly disclosed them to the defense. *Id.* The court ruled the failure to discover the notebooks earlier did not violate Rule 16. *Id.* at *5. Documents that must be subpoenaed are not controlled by the government, and the government had no obligation to discover materials not in its control. *Id.*; *see also Brennerman*, 818 Fed. App'x at 29 (saying the government fulfilled *Brady* by turning over every document received from a bank, even though the documents did not include exculpatory personal notes); *United States v. Villa*, No. 3:12cr40, 2014 WL 280400 (D. Conn. Jan. 24, 2014) ("To the extent that Defendant seeks documents in the possession or control of Eli Lilly rather than the government, it appears that *Brady* and Rule 16 do not require [government disclosure]").

This standard probably applies even if the government suspected or should have known that the third party held additional relevant information. *See Tomasetta* 2012 WL 896152 at *2. In *Tomasetta*, the government was aware for several months that the notebooks could exist, and did not follow up on a subpoena asking for the notebooks. *Id.* The court said that, while the government *should* have acted sooner, it fulfilled Rule 16 by promptly producing the notebooks once it possessed them. *Id.* at *5-6. Similarly, in *United States v. Hutcher*, defendant argued the government was required to provide contradictory statements made by a witness in a previous trial. 622 F.2d at 1088. The Court rejected the argument, stating that the trial testimony was possessed by the district court and thus not controlled by the prosecution. *Id.* It made this ruling even though the prosecution had obtained and disclosed the previous trial's docket sheet—which would have notified the prosecution that the district court's records held more information about the witness. *See id.* Finally, in *United States v. Avenatti*, Avenatti argued the government had deliberately failed to gain information from servers held by a bankruptcy trustee, despite knowing of their importance to the case. No. 19-CR-374, slip op. at 12 (S.D.N.Y. Feb. 15, 2022).

He also argued that, under Rule 16, the U.S. Attorney's Office prosecuting him should have obtained server information held by a U.S. Attorney's Office in California, which was prosecuting a separate case against Avenatti. *Id.* at 2, 6. The court rejected both Avenatti's arguments. *Id.* at 11-12. It said the California U.S. Attorney's Office was not part of the prosecution team under Rule 16, and that the government had no duty to try to obtain information it did not possess. *Id.* Thus, *Brady* and Rule 16 "[did] not require the Government to make efforts to "acquire" the Servers from the Bankruptcy Trustee or anyone else." *Id* at 12.

CONCLUSION

The government probably did not violate Rule 16(a)(1)(B)(i), because it was not required to use due diligence when collecting [[the third party's]] tapes. Rule 16's requirements only apply to documents in the government's possession, custody, or control. Both sides agree the tapes were never in governmental possession, custody, or control. Thus, the government was not required to conduct due diligence. As in *Finnerty*, *Weaver*, and *Tomasetta*, the [[materials]] were held by a third party that was not a governmental agency or part of the prosecution team. *Finnerty*, 411 F.Supp.2d at 433; *Weaver*, 992 F.Supp.2d at 157; *Tomasetta*, 2012 WL 896152 at *5. There was no legal agreement with the government to produce information. *Tomasetta*, 2012 WL 896152 at *5. Like *Weaver* and *Tomasetta*, the reason the government did not obtain the recording earlier is because the third party gave incomplete information. *Id.* at *2; *Weaver*, 992 F.Supp.2d at 157. Arguably, the prosecution should have known that additional recordings existed. However, in *Tomasetta*, *Hutcher*, and *Avenatti*, the government did not have an obligation to obtain additional information, even if had reason to believe additional information existed. *Tomasetta*, 2012 WL 896152 at *6; *Hutcher*, 622 F.2d at 1088; *Avenatti*, No. 19-CR-374, slip op. at 12 (S.D.N.Y. Feb. 15, 2022). Thus, Rule 16(a)(1)(B)(i) due diligence only applies

once evidence is controlled by the government. As long as the government promptly disclosed the recording once it obtained it, it probably fulfilled its disclosure obligations.

Applicant Details

First Name	**Benjamin**
Middle Initial	**F**
Last Name	**Brody**
Citizenship Status	**U. S. Citizen**
Email Address	**brodyb@pennlaw.upenn.edu**
Address	**Address** Street **1930 Chestnut Street, Apt 19B** City **Philadelphia** State/Territory **Pennsylvania** Zip **19103**
Contact Phone Number	**5126397010**

Applicant Education

BA/BS From	**Trinity University**
Date of BA/BS	**May 2020**
JD/LLB From	**University of Pennsylvania Carey Law School** **https://www.law.upenn.edu/careers/**
Date of JD/LLB	**May 15, 2024**
Class Rank	**School does not rank**
Law Review/Journal	**Yes**
Journal(s)	**University of Pennsylvania Law Review**
Moot Court Experience	**No**

Bar Admission

Prior Judicial Experience

Judicial Internships/ Externships	**No**

Post-graduate Judicial Law Clerk	**No**

Specialized Work Experience

Recommenders

Wolff, Tobias
twolff@law.upenn.edu
215-898-7471

Miller, Rachel
rmiller@philalegal.org
2159813842

Shanor, Amanda
shanor@law.upenn.edu
215-898-1729

This applicant has certified that all data entered in this profile and any application documents are true and correct.